163 U.S. 701

TRANSCRIPT OF RECORD.

163-701

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 434.

THE RAVEN GOLD MINING COMPANY, APPELLANT,

vs.

THE MINERS' UNION OF THE TOWN OF ALTMAN ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLORADO.

FILED AUGUST 10, 1894.

(15,663.)

enforcement of the contract, and the sale of the land, and that it is not at all optional with the petitioner or even with the Circuit Court to inject these extraneous matters into the controversy between Clark and Reeder.

If such claim for services existed, Mr. Reeder was entitled to have proper service of process, to have an opportunity to set forth his grounds of objection or defense to the claim, or to make a proper tender of such sum as he might think right and proper to be paid in the premises, and if controversy arose over this question of amount, to have the same tried by jury.

This is manifestly not the case where a Court is administering a trust, where litigation is being carried on for the benefit of a number of people, all of whom should contribute to the expenses as well as share in the common benefit, nor of any one of any of the classes of cases in which Courts have assumed to allow counsel fees from funds in Court.

And on the second point, that these causes having been, prior to the filing of the petition in question, removed by appeal from the Circuit Court of the United States for the District of West Virginia to this Honorable Court, and a bond having been filed as required by the decree, the said Circuit Court was at the time of passing the order of the 17th day of December, 1892, ordering the payment of $2,250 to Quarrier's administrator, which is here appealed from, wholly without jurisdiction, in the case of Clark vs. Reeder.

Keyser vs. Farr, 105 U. S., 266.
Skinner vs. Bland, 87 N. C., 168.
Stone vs. Spellman, 16 Texas, 432.
Levi vs. Carrick, 15 Iowa, 445-6.

JAMES McCOLGAN,
For Appellee.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., OCTOBER 11, 1895.

1 Pleas in the circuit court of the United States for the district of Colorado, sitting at Denver.

Be it remembered that heretofore and on, to wit, the 26th day of May, A. D. 1894, came The Raven Gold Mining Company, by Messrs. Thomas, Hartzell, Bryant & Lee, its solicitors, and filed in said court its bill of complaint against The Miners' Union of the Town of Altman, The Miners' Union of the Town of Victor, The Miners' Union of the Town of Anaconda, and The Miners' Union of the Town of Cripple Creek, Hugh O'Connell, Charles Cohn, Charles Redwood, David Jamerson, A. D. Casad, Fred. Todd, J. W. Cogswell, Walter Russell, William Puckett, William McClusky, Patrick Shea, Thomas Pearce, John Walsh, J. K. Kofford, Cass Hoeffel, Lee Hendrick, —— McCarthy, —— O'Connell, John Wolfman, John Calderwood, James Lyons, Thomas Gannon, George McMillen, Frank Wolf, —— McKinnsey, A. Morrison, Michael Walsh, P. Whalen, —— McNamara, and —— Ganhan.

And the said bill of complaint is in words and figures as follows, to wit:

2 UNITED STATES OF AMERICA, *District of Colorado,* } ss:

In the Circuit Court of the Eighth Judicial Circuit in and for said District. In Chancery.

To the honorable judges of said circuit court:

Humbly complaining, your orator, The Raven Gold Mining Company, a corporation organized under the laws of the State of West Virginia and a citizen of said State, but authorized to do business in the State of Colorado by virtue of a full compliance with the statutes of said State, files this its bill of complaint against The Miners' Union of the Town of Altman, The Miners' Union of the Town of Victor, The Miners' Union of the Town of Anaconda, and The Miners' Union of the Town of Cripple Creek, certain unincorporated associations of men who are citizens of the State of Colorado; Hugh O'Connell, Charles Cohn, Charles Redward, David Jamerson, A. D. Casad, Fred. Todd, J. W. Cogswell, Walter Russell, William Puckett, William McClusky, Patrick Shea Thomas Pearce, John Walsh, J. K. Kofford, Cass Hoeffel, Lee Hendrick, —— McCarthy, whose first name is to your orator unknown; —— O'Connell, whose first name is to your orator unknown; John Wolfman, and John Calderwood, James Lyons, Thomas Gannon, George McMillen, Frank Wolf, —— McKinnsey, whose first name is to your orator unknown; A. Morrison, Michael Walsh, P. Whalen, —— McNamara, and —— Gauhan, whose first names are to your orator unknown, citizens of the State of Colorado, and your orators allege that this is a controversy between citizens of different States;

3 that the amount involved in this controversy, exclusive of interest and costs, exceeds the sum of two thousand dollars.

Further complaining, your orator respectfully represents unto your honors that it is the owner and in possession of two certain lode mining claims situate in Cripple Creek mining district, county of El Paso and State of Colorado, known as and called the Raven and Princess E., and that it and its grantors have so been in peaceable possession and the owners thereof for a long period of time, to wit, for a period of more than two years last past; that, to wit, some time during the month of April, A. D. 1894, your orator purchased and received a conveyance of said mines from Edmund R. Stark and Edwin M. De La Vergne, who before that time had been the owners and in possession thereof; and your orator, further complaining unto your honors, says that its grantors were in possession as aforesaid and up to the first day of February, A. D. 1894, were engaged in working and developing the said Raven Lode mining claim, and for the purpose of so working and developing the same had employed large numbers of men who were willing to and did of their own accord engage to work in shifts of nine hours each, and for which said work its said grantors had been and were paying at the rate of $3.00 per man per day; that said men so employed as aforesaid contracted freely, willingly, and of their own accord to work and labor for the compensation aforesaid, and the work by them done and the compensation by them received was wholly and entirely satisfactory to both your orator's said grantors and the said workmen.

Further complaining, your orator represents and alleges that on or about the first day of February, 1894, the above-named defendants and other persons co-operating and confederating with
4 them, but whose names are to your orator unknown, and which, when known, your orator begs leave to be permitted to make them parties defendant hereto, determined, agreed, and conspired among themselves that eight hours should constitute a day's labor in said Cripple Creek mining district, and that $3.00 for said day's labor should be the minimum compensation therefor, and that no owner of any mine or mines should employ and no miner or workmen of any name, nature, or description should be permitted to work in or upon such mines in said district under any other conditions; that at about said time said defendants caused all workmen and miners engaged in and upon said mines and working the same under other terms and conditions to cease their work, and by dint of threats of great bodily harm in the event they persisted in so working and continuing in such employment compelled them to desist and refrain from said work; that, among others, the workmen employed by your orator's grantors were by the means aforesaid forced, compelled, and terrorized into abstaining from all further work of development upon said premises, in consequence whereof the said mine has remained idle and no work has been done thereon since said time except certain development carried on by contract made by your orator's grantors with contractors and which work is intended for purposes of development only, they, the said contractors, being compelled by virtue of the said regulations and conduct of the said defendants and their

said confederates to employ their labor under the terms and conditions thereby imposed.

Your orator further represents unto this honorable court that the work upon said Raven mine consists of a shaft and an upper and lower tunnel; that at the beginning or mouth of what is called the upper tunnel your orator's grantors have constructed an
5 ore-house and blacksmith shop, said house being necessary and desirable for the proper conduct and prosecution of the development of said mine; and your orator, complaining, alleges that the said tunnels for a great part of their distance are timbered with pine timbers and the shaft sunk to the depth of about two hundred feet is also timbered, while stopes and openings above the line of said upper tunnel have in certain places therein been heavily timbered to prevent the caving in of the walls thereof and the consequent destruction of the mine. Your orator, further complaining, alleges that on, to wit, the 24th day of May, A. D. 1894, as it is informed and believes, certain other owners of mines and mining property in said Cripple Creek mining district had determined to carry on the work of development of their said mines by such contracts and agreements and by means of such arrangements as the miners of said district desired to make without being coerced or intimidated by the regulations and conspiracy of the said above-named defendants, announced their purpose so to do to the sheriff of said county, and demanded his protection, who thereupon deputized a large number of men to act as deputy sheriffs for the purpose of protecting said mine-owners and their workmen in and about the exercise of their lawful right to work and develop their mines without the wrongful interference or intimidation of any of said defendants or other persons.

Your orator, further complaining, alleges upon information and belief that, in consequence of said resolution of the said mine-owners and of the appointment of said deputies or some one or more of them, together with others unknown to your orator, for the purpose of further intimidating, overpowering, and terrorizing both the miners and mine-owners of said camp and by way of retal-
6 iation upon the appointment of said deputy sheriffs, assembled together and began to destroy shaft-houses, blow up shafts, beat, bruise, wound, and otherwise maltreat workmen not belonging to their association, notified others to leave the said camp upon pain and penalty of death, and declared that, regardless of all justice, right, or protection of law, the mine-owners of said camp, including your orator, will not be permitted to work upon or develop their mines and mining property save under the terms and conditions proposed by the said defendants in furtherance of their said conspiracy, and, in the event of their persisting in their effort so to do, threaten to and will destroy their said property and beat, bruise, wound, kill, and murder the mine-owners of the said camp and such miners as are not in sympathy or association with them, the said defendants.

Further complaining, your orator alleges that, in case of its unwillingness to accede to the terms imposed by the said defendants,

your orator upon information and belief alleges that the said association and other members, including the individual defendants herein, threaten and intend to and will, unless prevented by the injunctive process of this honorable court, go upon, invade, and take possession of your orator's mines, destroy their ore-house and blacksmith shop, and blow up, set fire to, and otherwise destroy and injure their tunnels and shaft, thereby inflicting great and irreparable damage and injury upon them and upon their said property; and your orator, further complaining, alleges upon information and belief that the said defendants threaten to and will, unless interfered with by the process of this honorable court, terrorize and intimidate and, if necessary, beat, bruise, wound, kill, and murder any and all workmen whom your orator may employ and which it desires to employ for the purpose of further working upon
7 and developing the said mining property; that your orator has long been anxious and is now anxious to continue the work of development upon its said mines, but cannot do so without the protection of this honorable court with any safety to itself or to the workmen which it must employ for that purpose; that it can secure men willing and anxious to work for it provided they can receive protection from said defendants.

Your orator further alleges that it is without any remedy in a court at law, and is compelled to resort, in consequence, to the chancery side of this honorable court for equitable relief; that the urgency of the situation is too great to admit of its giving notice to the said defendant- or any of them of its contemplated action lest its property be destroyed or injured before this application upon notice can be heard.

And your orator further alleges that the said defendants and each of them are entirely insolvent and unable to respond in damages, and that the granting of relief in equity will prevent a multiplicity of suits which your orator will be obliged to resort to because of the threatened and continuous occur-ence of the injuries herein complained of.

Your orator therefore respectfully prays your honors to grant a writ of injunction issuing out of and under the seal of this honorable court and directed to The Miners' Union of Altman, The Miners' Union of Victor, The Miners' Union of Anaconda, The Miners' Union of Cripple Creek, Hugh O'Connell, Charles Cohn, Charles Redward, David Jamerson, A. D. Casad, Fred. Todd, J. W. Cogswell, Walter Russell, William Puckett, William McClusky, Patrick Shea, Thomas Pearce, John Walsh, J. K. Kofford, Cass Hoeffel, Lee Hendrick, —— McCarthy, —— O'Connell, John Wolfman, John Calderwood, James Lyons, Thomas Gannon, George McMillen, Frank Wolf, —— McKinnsey, A. Morrison, Michael Walsh, P. Whalen, —— McNamara, and —— Ganhan and each of them, their and each of their servants, attorneys, agents, employees, and representatives, commanding and enjoining each and every of them, their agents, attorneys, officers, servants, and abettors, from in any manner interfering with the complainant herein in any of its work in or

upon the said Princess E. and Raven Lode mining claims
8 mentioned in the complaint herein or any part thereof, and from in any manner by force, threats, or otherwise making any attempts to intimidate any employees of the plaintiff herein or from attempting to prevent any employees of the said plaintiff from proceeding to work for the complainant in a peaceful, quiet, and lawful manner in or upon any part of the aforesaid mines or mining claims or in or upon the said buildings of the said plaintiff therein or thereabouts or at all, or in or upon any of the underground workings of the said complainants or any part thereof, and that they, the said parties aforesaid, be further enjoined and restrained from intimidating or threatening by any force, threats, or any intimidation trying to prevent any employee of the plaintiff herein from working in or upon the aforesaid mines mentioned in the complaint herein, or in or upon the said ore-house or blacksmith shop, or in or upon any mining or other property of the plaintiff, or from preventing any one from entering the service of the plaintiff herein, or in any lawful manner interfere with the business of the said plaintiff in employing persons to work upon its said property, or from going upon any part of the said plaintiff's property without permission from the complainant or its agents or employees so to do, or in any manner entering upon the workings of the complainant or within the buildings of the complainant without its consent or the consent of its manager, agent, or employees, or from injuring or attempting to injure, destroy, or despoil the said ore-house and blacksmith shop or the said tunnel, shaft-house, or any workings connected therewith or any of the timbers thereof until the further order of this court, and that upon the final hearing of the matters and things herein set forth said injunction be made
9 perpetual.

And may it please your honors to grant the people's most gracious writ of subpœna issuing out of and under the seal of this honorable court, directed to the marshal of said district for service and return, commanding the said parties and each and every of them personally to be and appear before this honorable court upon a day certain to be named therein, then and there to stand to, abide by, and perform all and singular the orders and decrees of the court herein made and which to equity shall seem meet.

And, in duty bound, your orator will ever pray.

THOMAS, HARTZELL, BRYANT & LEE,
Solicitors for Complainant.

UNITED STATES OF AMERICA, } ss:
District of Colorado, County of Arapahoe, }

Edwin R. Stark, being first duly sworn, deposes and says—

That he is the vice-president of the above complainant; that he has read the above and foregoing bill of complaint, and that the matters and things are true as therein stated of affiant's own knowledge, except as to the matters and things therein stated upon infor-

mation and belief, and as to those matters and things he believes it to be true.

EDWIN R. STARK.

Subscribed and sworn to before me this 26th day of May, A. D. 1894.

My commission expires July 2, A. D. 1896.

[SEAL.] GEORGE P. STEELE.
Notary Public.

10 (Indorsed:) 3097. U. S. circuit court. The Raven Gold Mining Company *vs.* The Miners' Union of the Town of Altman *et al.* Bill of complaint. Filed May 26, 1894. Robert Bailey, clerk U. S. circuit court. Thomas, Hartzell, Bryant & Lee, solicitors for complainant.

In the Circuit Court of the United States for the District of Colorado, May 26th, 1894.

HALLETT, *J.*:

The bill presented this morning is by the Raven Gold Mining Company, a corporation organized in the State of West Virginia, against various societies having their headquarters in and about the town of Cripple Creek called "miners' unions" and against a number of men who are connected with the societies. It appears from the bill that persons who are made defendants in the suit are workmen who have been employed in and about the mines of Cripple Creek and have quit work and are what are commonly called strikers. They are engaged with some violence in preventing the owners of mines, the complainant with others, from carrying on work in the mines by employing men who may be willing to work for less wages than the defendants care to accept and who threaten to destroy the property of all who shall oppose them. They have destroyed some property in that neighborhood, and there is
11 reason to believe that they will continue the work of destruction with the avowed purpose of compelling the owners of mines in that locality to pay the wages which they demand and to employ only persons connected with the unions.

There is no matter presented in the bill which can form the subject of an issue in respect to the ownership or the right to occupy the mines in question. Clearly enough, what is alleged against the defendants is in violation of law, and what they are doing is in defiance of the civil authority of the State and with a view to overturn and overthrow the power of the government of the State. In my view, this is not a suit arising between citizens of different States in any proper sense of that word or of the phrase; it is not a suit or controversy such as is mentioned in the Constitution and laws of the United States, of which a Federal court may have jurisdiction, because there is nothing for trial; there is nothing for discussion. If we entertain this bill, it is not to be supposed that the defendants mentioned therein will come before the court or in any way contest the right of complainant to the possession of this prop-

erty and to employ such persons as it sees fit for such compensation as such persons may be willing to accept in and about the work of carrying on the mine. If any such matter should be presented and they were disposed to contest complainant's right, it is not a matter which would admit of debate, because, upon principles which are too well understood to admit of discussion, every man is entitled to the possession and use of his property and to employ such per-
12 sons as he sees fit in and about the business of carrying it on, and what is here asked is that the court shall exercise, as it seems to me, the police power of the State to protect the complainant in the possession of this property and to preserve it from destruction at the hands of defendants. This, I think, is a matter that falls entirely within the jurisdiction and authority of the State. Upon grounds which are well understood by all lawyers the police power in the matter of preserving the peace and good order of society, the matter of protecting people in the possession and enjoyment of property against those who would take it away from them by force and violence, is entirely committed to the State. The Federal Government does not have and does not claim to have any authority whatever in respect to such matters. It interferes for the purpose of protecting the peace of society only upon the request and application of the authorities of the State and upon the ground that the State is unable to protect its citizens in the possession of their property and in the enjoyment of their lives. If any citizen of another State comes into this State, he is while here entirely subject to the control of the State, and he must rely upon the State authorities for protection of his person. If he is assaulted, he must look to the State to protect him from assualt. It is true that when any one assaults him after the injury is committed he may sue in the Federal courts for damages for the injury done him; but that does not invest the Federal Government or its courts with authority to protect him in the first in-
13 stance from such assault; and so in regard to property, if it be taken from him or converted by other people—destroyed—he has his action for such property in the Federal courts; but the circumstance that the Federal Government has jurisdiction of such actions and allows him to assert his right in the Federal courts does not, it seems to me, give to the Federal Government the police power to protect him in the first instance from such wrong. If these men at Cripple Creek were a band of robbers going through the State and despoiling all upon whom they might come, this would be in violation of the law of the State. Every step of their progress would be marked by some crime against the laws of the State, but there would be no crime against the laws of the United States in anything that they might do, and the Federal Government could not, either through its courts or by its own act and by the direct agency of its officers, interfere to arrest their progress.

I comprehend that these views are not entertained in all parts of the country. The opinion of Judge Beatty in the case of The Cœur d'Alene Mining Company against The Miners' Union of Wardner is a full recognition of the right claimed here by complain-

ant. In his discussion he seems to go upon the ground that because the Government has jurisdiction of an action by a citizen of another State to recover property of which he has been deprived and demands which may be due to him, that therefore the Federal authority may be invoked to protect the citizen in the enjoyment of his property against law-
14 less violence in the first instance. I am unable to accept that view. I do not appreciate the force of his argument. I must say that with bands of men, some of them at least bent upon plunder and the overthrow of the civil authority in all parts of the country, I cannot understand that wherever they come upon the property of a citizen of another State and do some act of violence to that property the power and authority of the Federal Government may be invoked for protecting that property from injury, while a citizen of the State in which the act may be committed may call in vain for such assistance. I am unable to reach that conclusion, and so I feel compelled to deny this application. I do it with some reluctance, as differing from views that have been expressed by my brethren in other districts, but these matters are not altogether of today. These things have been going on for some time, and they have been somewhat in the minds of all thoughtful men, and we have occasion to reflect upon them very seriously. I must say that it is my opinion that the peace and good order of society in this State is committed entirely by the Constitution of the United States and by the constitution of this State to the authorities of the State. If the government of the State has fallen into the hands of socialists, as it certainly has, or of imbeciles, as is probably true, that is our misfortune, but we do not thereby acquire the right to assume control of affairs on the part of the Federal Government.

15 (Indorsed:) 3097. Raven Gold Mining Co. *vs.* Miners' Union of the Town of Aultman *et al.* Opinion on motion for injunction: Hallett, J. Filed May 26, 1894. Robert Bailey, clerk.

16 20th Day, May Term.

SATURDAY, *May 26th, A. D.* 1894.

Present: The Honorable Moses Hallett, district judge, and other officers, as noted on the first instant.

THE RAVEN GOLD MINING COMPANY *vs.* THE MINERS' UNION OF THE TOWN OF ALTMAN *et al.*	3097. In Chancery. Bill for Injunction.

At this day comes the said complainant, by C. S. Thomas, Esq., its solicitor, and the motion for an injunction herein, coming on now to be heard, is argued by counsel, and, the court being now suffi-

ciently advised in the premises, it is ordered, for good and sufficient reasons to the court appearing, that the said motion be, and is hereby, denied.

17 UNITED STATES OF AMERICA, } ss:
District of Colorado, }

In the Circuit Court of the Eighth Judicial Circuit in and for said District. In Chancery.

To the honorable judges of said court:

Humbly complaining, your orator, The Raven Gold Mining Company, a corporation organized under the laws of the State of West Virginia and a citizen of said State, but authorized to do business in the State of Colorado by virtue of a full compliance with the statutes of said State, files this its supplemental bill of complaint, its said original bill having been filed upon the 25th day of May, A. D. 1894, and the matters herein mentioned having occurred, or a large part of them, since the filing of said original bill, against The Miners' Union of the Town of Altman, The Miners' Union of the Town *of the town* of Victor, The Miners' Union of the Town of Anaconda, and The Miners' Union of the Town of Cripple Creek, certain unincorporated associations of men who are citizens of the State of Colorado; Hugh O'Connell, Charles Cohn, Charles Redward, David Jamerson, A. D. Cassad, Fred. Todd, J. W. Cogswell, Walter Russell, William Puckett, William McClusky, Patrick Shea, Thomas Pearce, John Walsh, J. K. Kofford, Cass Hoeffel, Lee Hendrick, —— McCarthy, whose first name is to your orator unknown; —— O'Connell, whose first name is to your orator unknown; John Wolf*man*; and John Calderwood, James Lyons, Thomas Gannon, George McMillen, Frank Wolf, —— McKinnsey,
18 whose first name is to your orator unknown; A. Morrison, Michael Walsh, P. Whalen, —— McNamara, and —— Ganhan, whose first names are to your orator unknown, all citizens of the *of the* State of Colorado, your orator humbly complaining of said respondents in the following particulars, to wit:

First. That this is a controversy and suit between citizens of different States; that the amount involved therein, exclusive of interest and costs, exceeds the sum of two thousand dollars, and that certain questions arising under the Constitution and laws of the United States are involved therein, in that your orator, a citizen of the State of West Virginia, has been deprived and is threatened with a continuance of said deprivation of its property rights and of privileges and immunities *are* guaranteed to it by the Constitution and laws of the United States.

Second. Further complaining, your orator respectfully shows unto your honors that it holds the possessory title to two certain lode mining claims situated in Cripple Creek mining district, county of El Paso and State of Colorado, known as and called the Raven and Princess E. Lode mining claims, and that it and its grantors have been the owners of said possessory claims for a long period of time,

to wit, for a period of more than two years last past, and until the happening of the things hereinafter set forth they were in the undisturbed and peaceable possession thereof; that your orator's grantors were Edmund R. Stark and Edwin M. De La Vergne, and that said mining claims were conveyed to your orator some time during the month of April, 1894.

Third. Your orator, further complaining, alleges that its grantors, the said Edmund R. Stark and Edwin M. De La Vergne, for a period of two years prior thereto and up to and about the 1st day of February, 1894, were in the peaceful possession of said
19 mining claims and engaged in the work of developing the same, and for the purpose of so working and developing the same had employed a large number of men, who were willing to and did of their own accord engage to work in shifts of nine hours each and for which said work its grantors had been and were paying at the rate of three dollars per man per day; that said men so employed as aforesaid contracted freely, willingly, and of their own accord to work and labor for the compensation aforesaid, and the work by them done and the compensation by them received was wholly and entirely satisfactory to both your orator's said grantors and the said workmen.

Fourth. That on or about the 1st day of February, 1894, the above-named defendants and other persons co-operating and confederating with them, whose names are to your orator unknown, and which, when ascertained, your orator begs leave to be permitted to make parties defendant hereto, determined, agreed, and conspired among themselves that eight hours should constitute a day's labor in the Cripple Creek mining district, in which said district your orator's claims are situated, and that $3.00 for said day's labor should be the minimum compensation paid to each man, and that no owner of any mine or mines should employ and no miner or workmen should be permitted to work in or upon said mines in said district under any other conditions, and in furtherance of said conspiracy and determination the said respondents and their co-conspirators caused all workmen and miners engaged in and upon said mines and working the same under other conditions and terms than those agreed upon as above set forth to cease their work and did compel them to cease their work by means of threats of great bodily harm in the event
20 they persisted and in the event of their continuing in such employment did compel them to refrain and desist from said work, and that among others whom they thus by threats and unlawful persuasions compelled to cease work were the workmen employed by your orator's grantors, in consequence whereof all the workmen employed by your orator's grantors were compelled and terrorized into abstaining from all further work of development and mining upon said mining claims, in consequence whereof the said mines became idle and have remained idle from that time until the present except certain development work which your orator's grantors had contracted with certain parties should be done, and since the filing of the original bill in this cause the said defend-

ants and their co-conspirators by means of their threats and unlawful persuasions have compelled and pursuaded said contractors to cease said work, for the reason that they would not comply with the terms and conditions agreed upon by said respondents and their co-conspirators.

Fifth. Your orator further represents unto your honors that the work upon said Raven mine consists of a shaft and upper and lower tunnel, and that at the beginning of the mouth of what is known as the upper tunnel your orator's grantors have constructed an ore-house and blacksmith shop, said house being necessary and desirable for the proper conduct and prosecution of the development of said mine, and your orator, complaining, alleges that the said tunnels for a great part of their distance are timbered with pine timbers and the shaft, sunk to the depth of about 200 feet, is also timbered, while stopes and openings above the line of said upper tunnel have in certain places therein been heavily timbered to prevent the caving in of the walls thereof and the consequent destruc-
21 tion of the mine; that the destruction of said shaft, tunnels, ore-house, and blacksmith shop and the timber therein would be a great and irreparable injury to your orator's property, and that the res-ondents above named have threatened and are continually threatening that in case your orator attempts to commence work upon said properties they will blow up the said ore-house and blacksmith shop and destroy the said tunnel and shafts and other workings by means of the explosion of giant powder, and in furtherance of said conspiracy your orator alleges that said respondents did, on or about the 24th day of May, 1894, blow up a certain shaft-house belonging to the Strong Mining Company and utterly destroyed the same, together with the machinery therein situated, to the value of several thousand dollars, did explode a keg of powder down the shaft of said Strong mine, destroy the timber therein, and did thereupon set fire to and destroy the wreck which was left of said property after the same had been exploded; that said act was committed because the said Strong Mining Company had endeavored to carry on work in their property contrary to the rules and regulations prescribed by the respondents and their co-conspirators, and was an act in furtherance of the conspiracy and agreement theretofore entered into between the respondents above named and their fellow-conspirators, who are unknown to your orator, and for the purpose of compelling, terrorizing, and coercing your orator and other mine-owners to adopt the rules and regulations agreed upon by said respondents; and your orator upon information and belief alleges that in case they attempt to work their said property contrary to the rules and regulations prescribed by said respondents and their fellow-conspirators their property will be similarly treated.

22 Sixth. Your orator further represents that in furtherance of said conspiracy the said respondents have terrorized, intimidated, and overpowered many persons who were willing to accept the wages agreed upon between them and your orator and other mine-owners in said district, and have compelled said persons to leave the district, and have wounded, bruised, and beaten many of

them so that some of them have since died, and have inaugurated such a reign of terror that no person dares to operate his mine without their consent and no miner dare work in any property without their consent and without complying with the terms and regulations agreed upon by them.

Seventh. Your orator further alleges that by reason of the enforced idleness of *his* property and the means it has been compelled to take for the purpose of protecting the same it has been damaged by the acts of the respondents above set forth in the sum of five thousand dollars, and that the said respondents, together with their co-conspirators, threaten and intend to and will, unless prevented by the injunctive process of this honorable court and in case your orator fail to agree upon the terms and conditions laid down by them, go upon your orator's premises and destroy *their* ore-house and blacksmith shop, blow up and set fire and otherwise destroy and injure *their* tunnels and shafts, thereby inflicting great and irreparable damage and injury upon your orator's property, in that if said shafts and tunnels are blown up the said property will cave in and it will be almost impossible to further work and develop the same, and unless your orator agrees to the terms laid down by the said respondents in regard to the working of said property
23 they will continue to terrorize, intimidate, and, if necessary, beat, bruise, wound, kill, and murder any and all workmen whom your orator may employ and prevent for an indefinite period and until your orator complies with said unlawful and illegal demands of the said respondents from working or otherwise developing or mining in and upon its said property.

Eighth. Your orator further alleges that it can procure men willing and anxious to work upon terms mutually to be agreed upon by and between your orator and the said men, and that if it is granted the protection of this court it will procure said men and work its said property; and your orator further alleges that said respondents above named are all of them wholly insolvent and unable to respond in damages in any suit which your orator may bring; that to recover damages for the many trespasses committed by said respondents will require and necessitate a great multitude of suits.

Ninth. Your orator further alleges that said respondents are all of them members of what is known as the Federated Miners' Union, an organization incorporated under the laws of the State of Montana, and that the various miners' unions above mentioned and others are branches of the Federated Miners' Union; that they are unincorporated societies organized in the State of Colorado and are controlled and governed by the rules laid down by the Federated Miners' Union of the State of Montana; that said Federated Miners' Union in the State of Montana entered into similar and like conspiracies as those above set forth, in and by which they attempted to coerce various mine-owners in the State of Montana into submitting to their demands, and that they are attempting to do the same thing with the various other mine-owners and miners in the

Cripple Creek mining district of the State of Colorado; that
24 they have entered into a well-organized and well-defined conspiracy and propose that in case their demands are not complied with that they will destroy the property and prevent the working of the same by all parties who fail to agree to the terms and conditions of their said conspiracy, and that said respondents are in league with the Federated Miners' Union of the State of Montana and of other States, so that their conspiracy is not confined to the State of Colorado, but extends over the States of Colorado, Montana, Idaho, and other Western States of the Union, and they are all controlled and operated by a central authority.

Tenth. Your orator further alleges that the Princess E. and Raven Lode mining claims above mentioned are located upon the public domain of the United States; that the paramount title is in the United States, and your orator can only secure said title by complying with the terms of the statutes of the United States in such case made and provided; that the acts of the respondents above named prevent and hinder your orator from complying with the requirements laid down by the statutes of the United States, and your orator, by reason of said acts, is prevented and the said respondents threaten to continue to prevent your orator's full compliance with said acts.

Eleventh. Your orator further represents and shows that the lode mining claims above mentioned belong to your orator, are valuable mineral deposits belonging to the United States; that by the statutes of the United States they are declared to be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase by citizens of the United States; and your orator further shows that it is a citizen and all its stockholders
are citizens of the United States; that it has the right, by
25 virtue of the statutes of the United States, to the occupation and purchase of said lands above mentioned, and that by reason of the acts and the unlawful conspiracy of the said respondents it has been denied the right of occupation and exploration of said property, and that said respondents threaten to continue to deny to your orator its right to explore and occupy said lands and ultimately to purchase the same from the Government of the United States.

Twelfth. Your orator further represents and shows unto your honors that in furtherance of the conspiracy set forth as aforesaid the respondents have erected upon a certain portion of the public domain of the United States near your orator's claims, which said portion of the lands of the United States has been located upon by certain other parties or persons, but the paramount title to which still remains and is in the United States, a certain fort or enclosure some 200 feet square, the walls of which are constructed of stone and logs, and have conveyed into said enclosure munitions of war, giant powder, and other destructible materials, for the purpose of preventing your orator and the owners of adjacent lode mining claims from going upon their premises and working and operating the same; that said enclosure is upon the land belonging *the* the

United States; that it is an unlawful enclosure and is built and constructed without any claim or right of title to said premises and without any intention upon the part of the said respondents to claim said property, but solely for the purpose of preventing your orator and the owners of adjacent properties from working their said lode mining claims; that in addition to said unlawful enclosure the said respondents have conspired and agreed among themselves to prevent other parties from going upon the unoccupied public
26 domain of the United States and exploring the same with a view of determining its mineral value and ultimately purchasing the same from the Government of the United States; that they have denied and prevented their ingress and egress across lands belonging to the Government of the United States which have never been located or claimed by any person or corporation whatsoever; that they are proceeding to patrol the country surrounding said fortification for many miles and preventing any person from going in or upon the same or passing over the public domain of the United States, so that by reason of the said conspiracy of the respondents and their co-conspirators and the acts aforesaid your orator and its workmen are prevented from crossing the unoccupied public domain of the United States or from going to their said property and working thereon, and the unlawful enclosure above mentioned is a continual menace and nuisance to your orator and prevents it from working, developing, or exploring its mining claims above set forth.

Thirteenth. Your orator further represents and shows unto your honors that the said respondents above named and their co-conspirators have conspired together to go on the premises of your orator for the purpose of depriving it, both directly and indirectly, of the equal protection of the laws, the equal privileges and immunities under the laws, and for the purpose of preventing and hindering the constituted authorities of the State of Colorado from giving and securing to your orator within the State of Colorado the equal protection of the laws, in that they have conspired to prevent your orator from working and developing its said property and contracting freely as it sees fit with other persons and to deprive your orator of
27 its property and prevent its property from being of any value to your orator by reason of the acts and things above set forth committed by the said respondents, and all of said respondents above named have been engaged in said conspiracy and have had knowledge thereof and have failed to prevent or attempt to prevent the same from being consummated.

Fourteenth. Your orator further represents and shows unto your honors that it has been and is now denied by the constituted authorities of the State of Colorado the equal and due protection of the laws to which under the constitution and the laws of the State of Colorado it is justly entitled, and has been deprived of its property without due process of law in this, to wit:

That said acts and doings of the respondents above named commenced against your orator's grantors on or about the first day of February, 1894, at which time, by reason of the acts and doings of

the respondents above named, your orator's grantors were compelled to cease work upon the property belonging to your orator; that some time afterwards, and on or about the 13th day of March, 1894, your orator's grantors, in connection with certain other owners of property, applied to the district court of the State of Colorado, sitting in and for the county of El Paso, for a certain writ of injunction directed against the respondents above named and their co-conspirators to prevent and enjoin them from doing the acts and things herein complained of; that said district court did grant said writ of injunction, and the same was issued, but that the sheriff of said county was unable to execute the same and said writ of injunction has proved wholly unavailing and of no force whatsoever, and your orator's grantors have since dismissed said suit so far as they are concerned, the sheriff of said county,
28 although perfectly willing to execute the same, having been up to this time wholly unable to give your orator any relief by virtue thereof, the respondents by means of their fort and fortification above set forth and the great numbers of men whom they have under their control, all of whom are well armed, having so far been able to withstand any and all efforts made by the sheriff of said county to put your orator in possession of said property or permit him to work and develop the same; that the sheriff of said county, in the further exercise of his duties and to protect your orator in the premises, did, in said month of March, call upon the governor of the State of Colorado for assistance, and the governor did order certain portions of the State militia to assist the said sheriff, but upon ascertaining the purpose for which he had been called upon did announce that the militia of the State should not be employed for the purpose of protecting private property, a portion of which property was your orator's, and did recall the said militia, which act did greatly encourage the respondents above named in their unlawful conspiracy against the rights of your orator and other property-owners in said Cripple Creek mining district; that after the return of said militia the said respondents above named and their co-conspirators were left in full possession of the field and were permitted to do as they saw fit, and have ever since prevented your orator and other property owners in said Cripple Creek mining district from working their said property, except upon compliance with their unlawful terms and conditions; and your orator further represents and shows that thereafter and on or about the 23rd day of May, 1894, the sheriff of said county having determined that the law should be upheld, and that your orator and other mine-owners
29 should be protected, called to his assistance a large number of deputy sheriffs, as your orator is informed and believes, to the number of several hundred, and did start in to said Cripple Creek mining district with the intention of serving certain writs and processes and of guarding your orator's and other mine-owner's property and putting your orator and other owners into the peaceable and undisturbed possession of their property; that this fact was at once communicated to the executive officers of the State of

Colorado, and the attorney general, in response to an inquiry submitted to him by the chief executive of the State, did advise the said executive that the acts of the said sheriff were unlawful, which said opinion of the attorney general is in words and figures as follows, to wit:

30 "ATTORNEY GENERAL'S OFFICE,
"DENVER, COLO., *May 25th*, 1894.

"Hon. Davis H. Waite, governor of Colorado.

"DEAR SIR: In answer to your inquiry of this date submitted to the office of the adjutant general I desire to say—

"That the organization of an armed force of men in Arapahoe county to march to or enter El Paso county for the purposes alleged is conspiracy to do or aid in any unlawful act, and all persons members of such armed force or co-operating to organize or to send or transport the same into one county from another are guilty of a conspiracy to do an unlawful act, and the deputizing of such men to act as deputy sheriff- by the sheriff of El Paso county is a violation of law. The law does not contemplate the appointment of residents and citizens of Arapahoe county as its deputy sheriffs of El Paso county. To keep and preserve the peace, to quiet and suppress all affrays, riots, and unlawful assemblages and insurrections, for the service of process in civil or criminal cases, and in apprehending or securing any persons for felony or breach of the peace the sheriff, under sheriff, deputy sheriff, coroner, and constables may call to their aid such persons of their county as they deem necessary, but they have no authority to call to their aid any persons from another county to act as a *posse comitatus* or as deputy sheriffs. Moreover, under the legislative act of 1891 deputy sheriffs can only be appointed under the direction of the board of county commissioners. If the sheriff and his legal deputies of El Paso county cannot with a *posse comitatus* keep and preserve the peace of that county and quiet and suppress all affrays, riots, unlawful assemblages, and insurrections therein, it is then the duty of the sheriff to call upon the chief executive of this State for the aid of the militia.

"In the case the sheriff of El Paso county uses the armed force above described as deputy sheriffs or as a *posse comitatus* and a riot or insurrection is precipitated by reason thereof, or if said armed force acts independently of such sheriff and a riot or in-
31 surrection insues by reason of an armed conflict with others, the chief executive of the State should preserve the peace of the Commonwealth even if it should become necessary to call out the entire military force of the State. If the peace cannot be preserved otherwise, marshal law should be declared in the particular district, and all violators of public order, included the said armed force, should be summarily dealt with, that the dignity of the State may be maintained inviolate.

"Yours truly, EUGENE ENGLEY,
"*Attorney General.*"

32 That thereupon, as your orator is informed and believes, the governor of said State did announce that in case the sheriff of said county of El Paso should proceed to restore your orator and other mine-owners to the possession of their property he would call out the militia of said State to prevent said sheriff from so doing. Your orator further represents that the acts and doings of the said sheriff were in accordance with the law in such case made and provided and were simply in furtherance of the protection of your orator's property. Your orator further represents upon information and belief that the governor of said State, the attorney general, and the adjutant general of said State, who is in command of the militia, are in league and full sympathy with the respondents and their co-conspirators above named, and the adjutant general of said State, whom the governor places in command of the militia and who was placed in command of the same when they were sent to the Cripple Creek mining district in March, 1894, is the paid attorney of the respondents above named and appeared for them when some of them were arrested and tried for their unlawful acts, and that the attorney general aforesaid did on the 28th day of May, 1894, visit and consult with the respondents above named and, as your orator is informed and believes, did inform them that the State government would take no action contrary to their interests. Your orator further represents and shows that in furtherance of the design upon the part of said officials to aid the said respondents and their co-conspirators the governor of said State did on, to wit, the 26th day of May, 1894, issue his certain proclamation, which said proclamation was intended to and did encourage
33 the said respondents above named in their conspiracy against the rights of your orator, said proclamation being in words and figures as follows, to wit:

Whereas, there is at present throughout the State a very general excitement and unrest; and whereas, affrays, riots, unlawful assemblies and insurrections have occurred in various parts of Colorado, the attention of all good citizens is called to the following provisions of the constitution and laws of the State:

First. "The right of no person to keep and bear arms in defense of his home, person and property, or in aid of the civil power when legally summoned, shall be called in question." (Const. Colo., bill of rights.)

This is a personal and individual right, which does not authorize the assembling of a multitude of armed men, by any individual or corporation, even to enforce an undoubted right. Courts are established for that very purpose. It is an extreme case where an individual may properly take the law into his own hsnds. He may always defend his life, person and property when directly attacked, but beyond that he must act, to use the words of the constitution, "in aid of the civil power, and be legally summoned."

Many States besides Colorado have the same provision in their constitutions, and the supreme court of one of these, Washington, has decided that "the right to bear arms shall not be construed as

authorizing individuals or corporations to organize, maintain or employ an armed body of men." (Wash. 1, 24.)

Second. Section 5, article 4, State constitution, says: "The governor shall be commander-in-chief of the military forces of the State, except when they shall be called into actual service of the United States. He shall have power to call out the militia to execute the laws, suppress insurrections or repel invasions." * * *

Ordinarily the governor of a State does not act until the county authorities, having failed to quell an insurrection, call upon the State for aid, but the duty of the governor does not depend upon such a call. If the insurrection exists, if it is of sufficient magnitude to prevent the execution of the laws, and especially if it has destroyed the lives of citizens of the State, the executive must act.

In full accord with the constitution which makes the governor the sole commander of the military forces of the State, section 3119, page 1713, Mills' Annotated Statutes, says: "It shall not be lawful for any body of men whatever, other than the regularly organized national guard of the militia, or the troops of the United States, to associate themselves together as a military organization." * * *

The militia of the State of Colorado is defined in section 1, article 17, State constitution, as follows:

"The militia of the State shall consist of all able-bodied male residents of the State, between the ages of 18 and 45 years, except such persons as may be exempted by the laws of the United States or of the State."

Powers of Sheriffs.

According to the constitution the supreme power to call out the militia is solely in the hands of the executive; and any statutory provisions that may have been enacted by the General Assembly of the State, except those provisions of the common law of England and the statutes which provide that the sheriffs of the State have certain powers to summon aid in the service of process and the *posse comitatus* of their respective counties in cases of riot and insurrection, are in violation of the organic law and void so far as they nullify or usurp the power in such cases of the executive authority of the governor of the State. The power assumed by the sheriffs of certain counties to make deputies and specials outside of their respective counties or to act outside of their respective counties, or within their counties except as the regular *posse comitatus* under the English common law, or practically to allow either a domestic or foreign corporation like the Pinkerton detective agency for instance to enlist from the militia and use an armed and hired organization for warlike purposes, whether the term of service be long or short, is a violation of the constitution of the State.

The claim made by individuals and corporations that because they are the undisputed owners of real and personal property, which they have reason to believe is in danger by prospective riot and insurrection, is good ground to call upon the city and county au-

thorities for protection by the *posse comitatus* from actual
34 overt acts after the ordinary civil power of the city and county is insufficient to preserve the peace, but it does not authorize the levy of war. Whenever a riot reaches the dignity of an insurrection and the sheriff is unable to suppress it by the power of his county, he should act, and is obliged to act, in subordination to the orders of the governor of the State, who, according to the constitution, "shall have power to call out the militia to execute the laws, suppress insurrection or repel invasion."

The power of the State executive, though supreme within the limits prescribed by the constitution, terminates when the constitutional duty is performed. The military power of the State may rightfully be invoked to suppress actual insurrection, but cannot be kept in the field simply to guard private property.

As to the difficulties at Cripple Creek, and the merits of the controversy between the miners and mine-owners I have no personal knowledge. Some months ago I was informed by the sheriff of El Paso county that such a condition of affairs existed in the western part of the county: that civil and criminal process could not be served, and that there was an armed resistance to legal authority which the power of the county was wholly unable to overcome. In accordance with the repeated requests of the sheriff, and after information had been received that the sheriff himself had been killed (a false statement) five companies of the national guard were ordered to Cripple Creek. Upon their arrival the commanding officer found no organized force in the field. The miners claimed that they neither had violated or had intended to violate any law. Some thirty or more miners voluntarily submitted to arrest on criminal process, were taken to Colorado Springs and incarcerated in jail.

They were mostly admitted to temporary bail, and all that were tried were acquitted. In the present difficulty there have been no arrests to my knowledge, and it seems to be an attempt to enforce so-called rights by the strong hand and not by an appeal to the courts. In my judgment, the parties to this difficulty, if reasonable and patriotic, might agree to some peaceable settlement of their difficulties, and I most respectfully recommend arbitration as in the best interest of all concerned.

But there is no doubt in the mind of the executive what is his duty in the premises—it is to suppress the insurrection now prevailing in the county of El Paso, even if it becomes necessary to call out all the military power of the State.

All good citizens are hereby commanded to lay down their arms and cease all acts in violation of the peace of the State.

Done at Denver, this 26th day of May, A. D. 1894.

DAVIS H. WHITE,
Governor of Colorado.

NELSON O. McCLEES,
Secretary of State.
LYMAN B. HENDERSON, *Deputy.*

By reason of which acts your orator alleges that the constituted authorities of the State of Colorado are in league with the respondents above named and will wholly prevent your orator from acquiring the possession of *his* said property and from working the same, and that by reason thereof your orator has been deprived of its property without due process of law and denied the equal protection of the laws, and such deprivation is threatened to continue and will continue unless your honors intervene to protect your orator in the premises; that by the Constitution and the laws of the United States your orator cannot be deprived of his property without due process of laws or denied such equal protection of the laws.

35 Fifteenth. Your orator further alleges that by reason of the acts and things above set forth it has no remedy in a court of law and it is compelled to resort in consequence to the chancery side of this honorable court for equitable relief, for due protection of its property, and the enforcement of the rights guaranteed to it by the Constitution and the laws of the United States; that the urgency of the situation is too great to admit of its giving notice to the said respondents or any of them of its contemplated action lest its property be destroyed or injured before this application could be heard upon notice.

Your orator therefore respectfully prays your honors to extend to your orator the protection of the court of chancery and grant to your orator a writ of injunction, directed to the respondents above named, their and each of their servants, attorneys, agents, employees, and representatives, commanding and enjoining them and each of them and every of them and their agents, attorneys, officers, servants, and abet-ors from in any manner interfering with the plaintiff herein in any of its work in or upon the said Princess E. and Raven Lode mining claims mentioned in this complaint, and from interfering with your said orator in its exploration and possession of said claims upon the public domain, and from interfering with your orator and its employés from crossing the public domain in order to enter upon its said property and to abate and remove the fort or enclosure above mentioned as an unlawful enclosure and as a nuisance upon the public domain of the United States, and from in any manner, by force, threats, or otherwise, making any attempt to intimidate any employees of the plain-

36 tiff herein or from attempting to prevent any employees of the said plaintiff from working in a peaceable, quiet, and lawful manner in or upon any part of the aforesaid mines or mining claims or in or upon the said building of the said plaintiff, therein or thereabouts, or in or upon any of the underground workings of the said plaintiff or any part thereof, and that they and each of the parties aforesaid be further enjoined and restrained from attempting, by intimidating, threatening, or by any force, threats, or intimidation, trying to prevent any employé of the plaintiff herein from working in or upon the aforesaid mines mentioned in the complaint herein or in or upon the said ore-house, blacksmith shop, or in or upon any mining or other property of the plaintiff, or from preventing any one from entering the service of the plaintiff herein

or in any unlawful manner interfering with the business of the plaintiff in the employing of persons to work upon its said property, or from going upon any part of the said plaintiff's property without permission from the plaintiff or its agents or employees so to do or in any manner entering upon the workings of the plaintiff without its consent or injuring or attempting to injure or destroy or despoil said ore-house and blacksmith shop or said tunnel, shaft-house connected therewith, or any of the timbers thereof until the further order of this court, and restraining and enjoining them from the commission of any act which deprives your orator of its property or is contrary to equity and good conscience, and that upon a final hearing of the matters and things herein set forth said injunction may be made perpetual; and may it please your honors to grant the people's most gracious writ of subpœna, issuing out of
37 and under the seal of this honorable court, directed to the marshal of said district, commanding the said parties and each and every of them personally to be and appear before this honorable court upon a day certain to be named therein, then and there to stand to and abide by and perform all and singular the orders and decrees of the court herein made and which to equity shall seem *mete*; and, in duty bound, your orator will ever pray, &c.

THOMAS, HARTZELL, BRYANT & LEE,
Solicitors for Complainant.

UNITED STATES OF AMERICA, }
District of Colorado, } *ss:*

H. H. Lee, being first duly sworn, upon his oath deposes and says that he is one of the attorneys of the above-named complainant; that he has read the above and foregoing bill of complaint, and that the same is true to the best of his knowledge, information, and belief.

H. H. LEE.

Subscribed and sworn to before me this 29th day of May, A. D. 1894.

My commission expires July 2, 1896.

[SEAL.] GEORGE P. STEELE,
Notary Public.

38 (Indorsed:) 3097. Circuit court, district of Colorado. The Raven Gold Mining Company *vs.* The Miners' Union of Victor *et al.* Supplemental bill. Filed May 29th, 1894. Robert Bailey, clerk, by Charles W. Bishop, deputy clerk. Thomas, Hartzell, Bryant & Lee, solicitors for complainant.

In the Circuit Court of the United States for the District of Colorado, May 31st, 1894.

RINER, *J.*:

In case No. 3097, The Raven Gold Mining Company against The Miners' Union and others, we have examined the authorities cited by counsel upon the application made upon the supplemental bill.

We are of the opinion that the additional matters set forth in the supplemental bill do not strengthen the plaintiff's case. We think the court is without jurisdiction in this matter for the reasons stated by Judge Hallett when the matter was first presented to him, which reasons, we think, will apply here in this application made upon the supplemental bill. The application for the injunction will be denied. I am authorized by Judge Hallett to say that he concurs in this view.

(Indorsed:) 3097. U. S. ct. court. Raven Gold M. Co. *vs.* Miners' Unions. Opinion of Judge Riner. Supplemental bill. Filed May 31st, 1894. Robert Bailey, clerk.

39 23d Day, May Term.

THURSDAY, *May* 31*st*, *A. D.* 1894.

Present: The Honorable Moses Hallett, district judge, and the Honorable John A. Riner, district judge, and other officers as noted on the first instant.

THE RAVEN GOLD MINING COMPANY *vs.* THE MINERS' UNION OF THE TOWN OF ALTMAN *et al.*	3097. In Chancery. Bill for an Injunction.

At this day comes the said plaintiff, by W. H. Bryant, Esq., its solicitor, and the supplemental bill of complaint for an injunction herein having heretofore come on to be heard, and having been argued by counsel and by the court taken under advisement, and the court being now sufficiently advised in the premises, it seemeth to the court now here that it hath not jurisdiction of the matter in controversy herein, and so the petition of the said supplemental bill is hereby denied.

THE RAVEN GOLD MINING COMPANY *vs.* THE MINERS' UNION OF THE TOWN OF ALTMAN, The Miners' Union of Town of Victor, The Miners' Union of the Town of Anaconda, The Miners' Union of the Town of Cripple Creek*e*, Hugh O'Connell, Charles Cohn, Charles R. Edward, David Jamerson, A. D. Casad, Fred. Todd, J. W. Cogswell, Walter Russell, Wm. Puckett, 40 Wm. McClusky, Patrick Shea, Thomas Pearce, John Walsh, J. K. Koffard, Cass Hoeffel, Lee Hendrick, —— McCarthy, —— O'Connell, John Wolfman, John Calderwood, James Lyons, Thomas Gannon, Geo. McMillen, Frank Wolff, —— McKinnsey, A. Morrison, Michael Walsh, P. Whalen, —— McNamara, —— Ganhan.	3097. In Chancery. Bill for an Injunction.

This cause coming on for hearing on an application for a temporary injunction on this 31st day of May, A. D. 1894, and the

complainant appearing by W. H. Bryant, one of its solicitors, and the court, having read the supplemental bill of complaint and listened to the argument of counsel and being sufficiently advised in the premises, doth deny said application, and it further appearing to the court upon a further consideration of said bill and the supplemental bill that it does not state facts sufficient to constitute a cause of action, for the reason that it does not present facts which give rise to a cause or controversy within the meaning of that term as used in the Constitution and laws of the United States, the court doth find that it is without jurisdiction to hear and determine said cause, and for the reason that it has no jurisdiction in the premises doth of its own motion dismiss said bill of complaint.

Wherefore it is ordered, adjudged, and decreed that this cause be dismissed at the complainant's cost.

41 THE RAVEN GOLD MINING COMPANY *vs.* THE MINERS' UNION OF THE TOWN OF ALTMAN *et al.* | 3097. In Chancery. Bill for Injunction.

At this day comes the said complainant, by W. H. Bryant, Esq., its solicitor, and prays an appeal from the decree of this court to the Supreme Court of the United States; which is allowed it, conditioned that it file herein its bond upon such appeal in the sum of three hundred dollars ($300).

THE UNITED STATES OF AMERICA, *District of Colorado.*

Know all men by these presents that we, —— ——, are held and firmly bound unto The Miners' Union of the Town of Altman, The Miners' Union of the Town of Victor, The Miners' Union of the Town of Anaconda, The Miners' Union of the Town of Cripple Creek, and all the defendants in suit numbered 3097 of the circuit court for the district of Colorado in the full and just sum of five hundred dollars, to be paid to the said respondents and defendants in said suit, their heirs, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this — day of June, in the year of our Lord one thousand eight hundred and ninety-four.

42 Whereas lately, at the May term, A. D. 1894, of the circuit court of the United States for the district of Colorado, in a suit pending in said court between The Raven Gold Mining Company, a corporation, plaintiff, and The Miners' Union of Altman and others above named and referred to, defendants, a decree was rendered against the said The Raven Gold Mining Company dismissing its bill of complaint, and the said The Raven Gold Mining Company having proved and been allowed an appeal from said decree to the Supreme Court of the United States, and a citation directed to the said The Miners' Union of Altman and other respondents above men-

tioned and referred to, citing and admonishing them to be and appear in the United States Supreme Court, at the city of Washington, D. C., thirty days from and after the date of said citation:

Now, the condition of the above obligation is such that if the said The Raven Gold Mining Company shall prosecute said appeal to effect and answer all damages and costs if it fails to make good its said plea, then the above obligation to be void; else to remain in full force and virtue.

DAVID. H MOFFAT. [SEAL.]
GEORGE E. ROSS-LEWIN. [SEAL.]

Sealed and delivered in presence of—

——.

Approved June 1st, 1894.
MOSES HALLETT, *Judge.*

43 (Indorsed:) Gen. No., 3097. Circuit court of the United States, district of Colorado. The Raven Gold Mining Company *vs.* The Miners' Union of the Town of Altman *et al.* Bond on appeal, $500. Filed this 1st day of June, A. D. 1894. Robert Bailey, clerk.

44 UNITED STATES OF AMERICA, *District of Colorado,* } *ss:*

In the Circuit Court.

THE RAVEN GOLD MINING COMPANY, Complainant,
vs.
THE MINERS' UNION OF ALTMAN & Others, Respondents.

Comes now the above-named complainant and avers that in the record in the above-entitled cause there is manifest error, in this, to wit:

First. That the court below erred in holding that it had not jurisdiction to hear and determine the controversy between the complainant and the above-mentioned respondents as set forth in the bill of complaint and supplemental bill herein.

Second. The court below erred in dismissing the complainant's bill of complaint and supplemental bill.

And for other good and sufficient reasons appearing upon the face of said record.

Wherefore said appellant prays that said decree may be wholly reversed, set aside, and for naught held.

THOMAS, HARTZELL, BRYANT & LEE,
Solicitors for Complainant.

(Indorsed:) 3097. Circuit court, district of Colorado. The Raven Gold Mining Company *vs.* The Miners' Union of Altman *et al.* Assignment of errors. Filed Jun- 2, 1894. Robert Bailey, clerk U. S. circuit court.

45 UNITED STATES OF AMERICA, } ss:
District of Colorado, }

In the Circuit Court.

THE RAVEN GOLD MINING COMPANY, Complainant,
vs.
THE MINERS' UNION OF ALTMAN & Others, Respondents.

I, John A. Riner, district judge of the United States court for the district of Wyoming and assigned to hold the circuit court of the United States for the district of Colorado and holding the same together with Moses Hallett, district judge for the district of Colorado, at the May term of said circuit court for the year 1894, do hereby certify that the above-entitled cause came on for hearing before the court, and, it appearing to the court that the circuit court of the United States did not have jurisdiction to try the same, the said cause was by the court dismissed for want of jurisdiction, and that said question of the jurisdiction of the circuit court of the United States was the only one involved in said cause and was the sole question upon which the said cause was dismissed and a final decree entered, and is the question upon which an appeal was allowed to the Supreme Court of the United States.

JOHN A. RINER, *Judge.*

46 UNITED STATES OF AMERICA, } ss:
District of Colorado, }

I, Robert Bailey, clerk of the circuit court of the United States for the district of Colorado, do hereby certify that I am acquainted with the signature of John A. Riner, judge of the district court of Wyoming and assigned to hold the circuit court of the United States for the district of Colorado; that I have examined the signature to the foregoing certificate and know the same to be the signature of the said John A. Riner.

In testimony whereof I have hereunto affixed my hand and seal of the circuit court of the United States for the district of Colorado this 18th day of June, A. D. 1894.

[SEAL.] ROBERT BAILEY, *Clerk.*

(Indorsed:) 3097. U. S. circuit court. The Raven Gold Mining Co. *vs.* The Miners' Union of the Town of Altman *et al.* Certificate of district judge as to jurisdiction in case. Filed Jun- 18, 1894. Robert Bailey, clerk U. S. circuit court.

47 *Citation.*

THE UNITED STATES OF AMERICA, }
District of Colorado. }

THE UNITED STATES OF AMERICA:

To the Miners' Union of the Town of Altman, the Miners' Union of the Town of Victor, the Miners' Union of the Town of Anaconda, the Miners' Union of the Town of Cripple Creek, Hugh O'Connell, Charles Cohn, Charles Redward, David Jamerson, A. D. Cassad, Fred. Todd, J. W. Cogswell, Walter Russell, William Puckett, William McClusky, Patrick Shea, Thomas Pearce, John Walsh, J. K. Kofford, Cass Hoeffel, Lee Hendrick, John Wolfman, John Calderwood, James Lyons, Thomas Gannon, George McMillen, Frank Wolf, A. Morrison, Michael Walsh, P. Whalen, and —— McCarthy, —— O'Connell, —— McKinnsey, —— McNamara, and —— Ganhan, whose Christian names are unknown, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at the city of Washington, D. C., thirty days from and after the day this citation bears date, pursuant to an appeal allowed and entered of record in the clerk's office of the circuit court of the United States for the district of Colorado, sitting at Denver, in said district, wherein The Raven Gold Mining Company is appellant and you are appellees, to show cause, if any there be, why the judgment rendered against the said appellant, as in the said appeal mentioned, should not be corrected and why speedy justice should not be done the parties in that behalf.

Witness the Honorable John A. Riner, district judge assigned to hold the circuit court of the United States for the district of Colorado, this 31st day of May, in the year of our Lord one thousand eight hundred and ninety-four.

JOHN A. RINER,
Judge of District Court of the United States for the District of Wyoming, Assigned to Hold the Circuit Court of the United States for the District of Colorado.

48 [Endorsed:] Gen. No., 3097. 1252. The Raven Gold Mining Co. *vs.* The Miners' Union of the Town of Altman *et al.* Citation. Filed in United States circuit court for the district of Colorado this 16th day of June, A. D. 1894. Robert Bailey, clerk. —— ——, attorney for plaintiff in error. J. Calderwood.

Proof of Service.

THE UNITED STATES OF AMERICA, }
District of Colorado, } ss:

On this second day of June, A. D. 1894, I do hereby certify that I have duly executed the within writ by delivering a true copy of the within citation personally to John Calderwood and to John Calder-

wood, the president of the Federated Miners' Union of Cripple Creek, which consist of the four mining unions named within. Said writ was served by me at Colorado Springs, State of Colorado, on the above-named day.

G. H. JONES,
U. S. Marshal,
By WILLIAM WISE,
Deputy U. S. M.

Sworn to and subscribed before me this — day of ——, A. D. 189–.

—— ——, *Clerk,*
By —— ——,
Deputy Clerk.

I hereby acknowledge service of the within citation upon all of the defendants named herein this 15th day of June, 1894, at Denver, Arapahoe county, Colorado.

B. F. & W. S. MONTGOMERY,
Attorney- for Defendants and Appellees.

49 UNITED STATES OF AMERICA, } ss:
District of Colorado, }

I, Robert Bailey, clerk of the circuit court of the United States for the district of Colorado, do hereby certify the above and foregoing to be a true, perfect, and complete transcript and copy of the record and proceedings and all thereof heretofore filed and entered of record in said court and in a certain cause lately in said court pending wherein The Raven Gold Mining Company was complainant and The Miners' Union of the Town of Altman, The Miners' Union of the Town of Victor, The Miners' Union of the Town of Anaconda, and The Miners' Union of the Town of Cripple Creek, Hugh O'Connell, Charles Cohn, Charles Redwood, David Jamerson, A. D. Casad, Fred. Todd, J. W. Cogswell, Walter Russell, William Puckett, William McClusky, Patrick Shea, Thomas Pearce, John Walsh, J. K. Kofford, Cass Hoeffel, Lee Hendrick, —— McCarthy, —— O'Connell, John Walfman, John Calderwood, James Lyons, Thomas Gannon, George McMillen, Frank Wolf, —— McKinnsey, A. Morrison, Michael Walsh, P. Whalen, —— McNamara, and —— Ganhan were defendants as fully and completely as the same still remains on file or of record in my office.

In testimony to the above I do hereunto sign my name and affix the seal of said court, at Denver, in said district, this 20th day of June, A. D. 1894.

[Seal United States Circuit Court, District of Colorado.]

ROBERT BAILEY, *Clerk.*

Endorsed on cover: Case No. 15,663. Colorado, C. C. U. S. Term No., 434. The Raven Gold Mining Company, appellant, *vs.* The Miners' Union of the Town of Altman *et al.* Filed August 10th, 1894.

Office Supreme Court U. S.
FEB 21 1896
JAMES H. McKENNEY,

Supreme Court of the United States.

OCTOBER TERM, 1895.

No. 434.

THE RAVEN GOLD MINING COMPANY, APPELLANT,

vs.

THE MINERS' UNION OF THE TOWN OF ALTMAN ET AL.

AFFIDAVITS OF PENDENCY OF SUBSISTING CONTROVERSY.

C. S. THOMAS,
W. H. BRYANT,
Solicitors for Appellant.

S. F. PHILLIPS,
F. D. MCKENNEY,
Of Counsel.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1895.

No. 434.

THE RAVEN GOLD MINING COMPANY, APPELLANT,

vs.

THE MINERS' UNION OF THE TOWN OF ALTMAN ET AL.

AFFIDAVITS IN SUPPORT OF JURISDICTION.

STATE OF COLORADO, }
County of El Paso, } *ss:*

E. M. De La Vergne, E. R. Stark, and Charles E. Noble, being each first duly sworn, upon his oath, each for himself and not for one another, deposes and says that the said E. M. De La Vergne is president of the Raven Gold Mining Company; that the said E. R. Stark is vice-president and the said Charles E. Noble is secretary of said company; that after the bill in equity was filed by and on behalf of said The Raven Gold Mining Company in the circuit court of the United States within and for the district of Colorado on the 26th day of May, 1894, wherein The Miners' Union of the Town of Altman, The Miners' Union of the Town of Victor, The Miners' Union of the Town of Anaconda, and The Miners' Union of the Town of Cripple Creek, together with

a large number of individuals, were made respondents, and the said company prayed that an injunction might be issued by the said circuit court to restrain said respondents from interfering with the said company in the possession of its property, and that said respondents might be restrained from making attempts to intimidate employés of plaintiff, and to prevent the plaintiff from employing whomsoever it might desire upon such terms as could be mutually agreed upon between the said plaintiff and persons whom it might employ, and after said application for an injunction had been denied on the 26th day of May, 1894, and after a supplemental bill had been filed in said cause against the same respondents on the 29th day of May, 1894, and another application for an injunction had been made to the said circuit court of the United States, which on the 31st day of May had been denied, and said bill on the said 31st day of May had been finally dismissed by the court of its own motion and a final decree entered in said cause dismissing the bill of the said complainant, The Raven Gold Mining Company, upon the ground that the said circuit court of the United States had no jurisdiction of such a suit or controversy, said company immediately caused a record in said cause to be prepared and sent its solicitor to the city of St. Paul, in the State of Minnesota, where the Honorable David J. Brewer, the justice of the Supreme Court of the United States allotted to the eighth judicial circuit, was then present, sitting as a judge of the United States circuit court of appeals for the eighth circuit, and prayed the said Honorable David J. Brewer that he would grant a temporary injunction in the name of the Supreme Court of the United States, which relief the said Honorable David J. Brewer refused to grant; that immediately thereafter certain of the mine-owners in the Cripple Creek mining district, having been denied protection from the unlawful acts of the respondents in the above-entitled cause by the properly constituted authorities of the State of Colorado, and the courts of the State of

Colorado having been rendered powerless to serve their process or execute their writs by virtue of the action of the executive officers of the said State of Colorado, and the United States circuit court sitting for the district of Colorado having held that it had no jurisdiction in the premises, were compelled to make and did make whatever terms they were able with the said respondents and their representatives for the purpose of resuming work on their properties and regaining possession thereof, and as a result work was resumed upon a large number of properties in the Cripple Creek district by the owners thereof, and they employed members of the various unions who were named as respondents herein; but that The Raven Gold Mining Company, the appellant in this suit and the complainant in the suit below, was not a party to any agreement or understanding of any kind by which this work was resumed; that no negotiations of any kind or description were ever opened between any of the respondents herein and the Raven Gold Mining Company for a settlement or compromise of the present litigation; that the same has never been settled or compromised or any agreement made to settle or compromise the same of any kind, nature, or description, and that said controversy is still pending and undetermined between the said The Raven Gold Mining Company and the respondents named in said bill; that by reason of the fact that other owners had resumed work upon their property, and that the said The Raven Gold Mining Company had acquired no protection from the State officers of the State of Colorado and was denied any relief by the circuit court of the United States upon its said bill of complaint, in order to preserve its property from destruction it has employed a few men for the purpose of doing some work upon its property, some of whom were members of the unions named as respondents, and that in so doing it has been compelled to pay said men the wages which had been fixed by the said miners' unions and employ them the number of hours which had been determined by said unions

to constitute a day's work, instead of employing them as theretofore; but that said action upon the part of the said company was taken without any agreement or intention to waive any of the rights which it claimed in its said suit without recognizing the right of said unions to fix terms or dictate to the said company as to the ownership and management of its said property, and only a sufficient number of men were so employed to preserve said property and prevent it from lying idle, and that from that time to the present the said Raven Gold Mining Company has leased portions of its said premises instead of working it directly, and this because it has not and will not accede to the demands and requirements of said respondents as a condition to the enjoyment and peaceable possession of its said property.

That said leases are made to men willing to comply with said demands, and who, as affiants are informed and believe, employ men and do their work in accordance with said requirements.

That during all of said time said company has been and now is anxious to work its own property, as it had worked the same prior to the birth of this controversy, with its own men, upon such wages and at such hours as it and they should determine, but has been prevented from so doing by reason of the threats and unlawful acts of the said miners' unions and the members thereof, and because the renewal of work aforesaid would inevitably cause a renewal of the matters and things enumerated in the complaint herein; that during all of said times it could have employed men to work for longer hours and at less wages than those which are fixed by the said unions, but has been prevented from so doing by the unlawful threats of said unions, and that in case this Court reverses the action of the lower court and holds that the circuit court of the United States has jurisdiction there will still remain a controversy which can be carried into effect by the action of the lower court by granting said injunction, and thereby protecting the complain-

ant in the possession and enjoyment of its said property and in the right to work and mine the same as it may desire, and that said appellant proposes to have a final decree entered in said cause, giving it the rights claimed by it in said bill of complaint, and obtaining the relief sought in the event this honorable Court shall reverse the decree of the court below, and then to work its property upon such terms and conditions as it shall see fit and can be agreed upon between it and its employés without let or hindrance upon the part of said respondents; that there is now and has been at all times since the institution of said suit a *bona fide* actual controversy subsisting between the said Raven Gold Mining Company and the respondents therein, which said controversy can be determined by the filing of an answer upon the part of said respondents, the taking of testimony, and a full hearing of the same, and that in case a decree is rendered in favor of said Raven Gold Mining Company said decree can be carried into force and full effect given thereto as these officials are advised and believe; and these affiants aver that they cannot resume operations on their said premises as they were carried on when this controversy arose and as they wish and have a right to do unless this appeal is considered and the decree of the lower court is reversed.

E. M. De La Vergne.
E. R. Stark.
Chas. E. Noble.

Subscribed and sworn to before me this 11th February, 1896.

[seal.] Alexander W. Conacher,
Notary Public.

My commission expires September 15, 1896.

C. S. Thomas,
W. H. Bryant,
Solicitors for Appellant.

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Office Supreme Court U. S.
FILED.
SEP 30 1895
JAMES H. McKENNEY,
CLERK

IN

The Supreme Court

OF THE

United States.

THE RAVEN GOLD MINING COMPANY,
Appellant.
vs.
THE MINERS' UNION OF ALTMAN, *et al.*,
Appellees.

BRIEF AND ARGUMENT OF APPELLANT ON MOTION TO ADVANCE.

C. S. THOMAS,
W. H. BRYANT,
Solicitors for Appellant.

C. J. KELLY, Printer, Denver.

IN

The Supreme Court

OF THE

United States.

THE RAVEN GOLD MINING COMPANY,
Appellant.

vs.

THE MINERS' UNION OF ALTMAN, *et al.*,
Appellees.

MOTION TO ADVANCE.

Comes now the above named appellant, by C. S. Thomas and W. H. Bryant, its solicitors, and moves the Court to advance the above entitled cause upon its docket, in accordance with rule thirty-two of this Court, and for cause of said motion said appellant alleges that this cause was commenced in the Circuit Court of the United States for the District of Colorado on the 26th day of May, A. D. 1894, by the filing of a bill of com-

plaint by the complainant, The Raven Gold Mining Company, against the respondents, who are the appellees in this Court; that a temporary writ of injunction was asked against said respondents upon the same day by the said complainant, which was by the Court denied; that afterwards, and on the 29th day of May, A. D. 1894, a supplemental bill of complaint was filed by the complainant, and a second application for a writ of injunction made; that the Court denied said second application for a writ of injunction and, of its own motion, dismissed the bill of complaint and entered a final decree upon the ground that it had no jurisdiction whatever of the subject matter of the controversy. An appeal was then prayed to this Court, and the Circuit Court, by one of its judges, gave a certificate that said cause had been dismissed solely upon the ground that the Court below had no jurisdiction of the subject matter of the controversy.

By reason of which facts, this cause is brought within the provisions of section 1 of the act of February 25th, 1889, chapter 236, 25 Statutes at Large, 693, and within the provisions of section 5 of the act of March 3d, 1891, chapter 517, 26 Statutes at Large, 826, and within the exact terms of rule thirty-two of this Court.

C. S. THOMAS,
W. H. BRYANT,
Solicitors for Appellant.

IN

The Supreme Court

OF THE

United States.

THE RAVEN GOLD MINING COMPANY,
Appellant.

vs.

THE MINERS' UNION OF ALTMAN, *et al.*,
Appellees.

BRIEF AND ARGUMENT OF APPELLANT ON MOTION TO ADVANCE.

I.

STATEMENT OF THE CASE.

This case was commenced in the Circuit Court for the District of Colorado on the 26th day of May, A. D. 1894, by the filing of a bill of complaint. The plaintiff was The Raven Gold Mining Company, a cor-

poration organized under the laws of West Virginia; the respondents were the Miners' Union of the Town of Altman, the Miners' Union of the Town of Victor, the Miners' Union of the Town of Anaconda and the Miners' Union of the Town of Cripple Creek, which were certain unincorporated associations of men, all of whom were citizens of the State of Colorado, and against a large number of individual defendants, all of whom were citizens of the same State. The allegations of the bill of complaint were that the complainant was the owner of two lode mining claims situated in the Cripple Creek Mining District of Colorado, and that up to the 3d day of February, 1894, it was engaged in the lawful and peaceable working of the same and paying its men certain stipulated wages; that on or about the 1st day of February, 1894, the respondents named, and other persons cooperating and confederating with them, determined and agreed among themselves that eight hours should constitute a day's labor in the Cripple Creek Mining District, and that three dollars should be the minimum compensation for such day's labor, and that no one should employ any person upon any other scale of wages and that no person should work upon any other terms; that pursuant to said agreement, the respondents and others had prevented the complainant from working its mine, to its injury in the sum of many thousand dollars, and were at that time by force and threats preventing the complainant from working the same; that all of said respondents were wholly insolvent and irresponsible. An injunction was prayed for, restraining the respondents from interfering with the complainant in the possession of its property and the quiet and peace

able working of the same; and there was the usual prayer for full equitable relief.

Upon the same day that the bill was filed an application for a temporary injunction was made, which, after due argument, was denied by the Court, upon the sole ground that the subject matter of the bill did not present a cause or controversy within the meaning of those terms as used in the Constitution of the United States. On the 29th day of May, 1894, a supplemental bill was presented to the Court, containing the same matters found in the original bill, and, in addition thereto, set forth further grounds for relief, alleging, that the complainant was attempting to perfect title to certain mining claims which it had located upon the public domain of the United States, in pursuance of the acts of Congress, and that the respondents were preventing and prohibiting it from complying with the requirements laid down by Congress to acquire such title; that the respondents were preventing the complainant from going upon mineral land belonging to the United States and mining and exploring the same; that the respondents had entered upon the public domain of the United States and erected an unlawful enclosure and obstructed free passage across the same, contrary to the statutes of the United States; that the respondents had conspired together to go upon premises of complainant and deprive it of the equal protection of the laws and of certain immunities and privileges guaranteed to it by the Constitution and the laws of the United States; and that the complainant, by the combined acts of the respondents and of the officials of the State of Colorado, charged with executing the laws, had been deprived of its property without due proc-

ess of law, and had been denied the equal protection of the law, contrary to the provisions of the Fourteenth amendment to the Constitution of the United States.

This supplemental bill was presented to the Court upon the same day, and argued upon these additional propositions. Upon the 31st day of May, the Court entered an order denying the application for the injunction, and, of its own motion, dismissed the case, upon the ground that it had no jurisdiction to entertain such a suit, for the reason that it was not a cause or controversy within the meaning of those terms as used in the Constitution of the United States. An appeal was immediately prayed to this Court, and it is upon this record that the case is presented for consideration.

II.

SPECIFICATION OF ERRORS.

The only error contained in the record is the action of the Court in holding that it had no jurisdiction of this suit for the reason that it was not a cause or controversy within the meaning of those terms as used in the Constitution of the United States.

III.

ARGUMENT.

Upon the motion to advance no argument is needed. The certificate of the judge of the Circuit Court was as follows:

"I, John A. Riner, District Judge of the United States Court for the District of Wyoming, and as-

signed to hold the Circuit Court of the United States for the District of Colorado, and holding the same together with Moses Hallett, District Judge for the District of Colorado, at the May term of said Circuit Court, for the year 1894, do hereby certify that the above entitled cause came on for hearing before the Court, and it appearing to the Court that the Circuit Court of the United States did not have jurisdiction to try the same, the said cause was by the Court dismissed for want of jurisdiction, and that said question of the jurisdiction of the Circuit Court of the United States was the only one involved in said cause and was the sole question upon which the said cause was dismissed and a final decree entered, and is the question upon which an appeal was allowed to the Supreme Court of the United States."

And the final decree itself contains this clause:

"And it further appearing to the Court, upon a further consideration of said bill and supplemental bill, that it does not state facts sufficient to constitute a cause of action, for the reason that it does not present facts which give rise to a cause or controversy within the meaning of that term as used in the Constitution and laws of the United States, the Court doth find that it is without jurisdiction to hear and determine said cause, and for the reason that it hath no jurisdiction in the premises doth of its own motion dismiss said bill of complaint."

This brings the cause clearly within the provisions of the statute and the decisions of this Court as to the procedure in the Court below.

Maynard vs. Hecht, 151 U. S., 324.

Under the provisions of rule thirty-two, the cause will be advanced and heard under the conditions prescribed by rule six. We understand the meaning of this to be that we must submit in the first instance, with our motion to advance, an argument upon the merits, so that the Court may determine the whole matter at one time.

Our argument upon the merits will be brief. We believe the question involved is of sufficient importance to warrant extended oral argument, although its determination, in our judgment, can be but one way. The position of the Court below is clearly and concisely stated in the following opinion of Judge Hallett:

"The bill presented this morning is by The Raven Gold Mining Company, a corporation organized in the State of West Virginia, against various societies having their headquarters in and about the town of Cripple Creek, called 'Miners' Unions,' and against a number of men who are connected with the societies. It appears from the bill that persons who are made defendants in the suit are workmen who have been employed in and about the mines of Cripple Creek, and have quit work, and are what are commonly called strikers. They are engaged with some violence in preventing the owners of mines, the complainant with the others, from carrying on work in the mine by employing men who may be willing to work for less wages than the defendants care to accept, and who threaten to destroy the property of all who shall oppose them. They have destroyed some property in that neighborhood, and there is reason to believe that they will continue the work of destruction with the avowed purpose of compelling the owners of mines in that locality to pay the wages which they demand, and to employ only persons connected with the unions. There is no matter presented in the bill which can form the subject of an issue in respect to ownership or the right to occupy the mines in question. Clearly enough what is alleged against the defendants is in violation of law, and what they are doing is in defiance of the civil authority of the State, and with a view to overturn and overthrow the power of the government of the State. In my view this is not a suit arising between citizens of different states, in any proper sense of that word or of the phrase.

"It is not a suit or controversy such as is mentioned in the Constitution and laws of the United States, of which a Federal Court may have jurisdiction, because there is nothing for trial; there is nothing for discussion. If we entertain this bill, it is not to be supposed that the defendants mentioned therein will come before the Court, or in any way contest the right of the complainant to the possession of this property, and to employ such persons as it sees fit, for such compensation as such persons may be willing to accept in and about the work of carrying on the mine. If any such matter should be presented, and they were disposed to contest complainant's right, it is not a matter which would admit of debate; because, upon principles which are too well understood to admit of discussion, every man is entitled to the possession and use of his property, and to employ such persons as he sees fit in and about the business of carrying it on; and what is here asked is, that the Court shall exercise, as it seems to me, the police power of the State to protect the complainant in the possession of this property, and to preserve it from destruction at the hands of defendants. This, I think, is a matter that falls entirely within the jurisdiction and authority of the State. Upon grounds which are well understood by all lawyers, the police power in the matter of preserving the peace and good order of society, the matter of protecting people in the possession and enjoyment of property against those who would take it away from them by force and violence, is entirely committed to the State. The Federal government does not have, and does not claim to have, any authority whatever in respect to such matters. It interferes for the purpose of protecting the peace of society only upon the request and application of the authorities of the State, and upon the ground that the State is unable to protect its citizens in the possession of their property and in the enjoyment of their lives. If any citizen of another State comes into this State, he is, while here, entirely subject to the control of the State, and he must rely upon the State authorities for protection of his person. If he is assaulted, he

must look to the State to protect him from assault. It is true that when any one assails him, after the injury is committed, he may sue in the Federal Courts for damages for the injury done him; but that does not invest the federal government or its Courts with authority to protect him in the first instance from such assault.

"And so in regard to property—if it be taken from him or converted by other people, destroyed, he has his action for such property in the Federal Courts; but the circumstance that the Federal government has jurisdiction of such actions, and allows him to assert his right in the Federal Courts, does not, it seems to me, give the Federal government the police power to protect him in the first instance from such wrong. If these men at Cripple Creek were a band of robbers going through the State and despoiling all upon whom they might come, this would be in violation of the law of the State. Every step of their progress would be marked by some crime against the laws of the State; but there would be no crime against the laws of the United States in anything that they might do, and the Federal government could not either by its Courts or by its own act and by the direct agency of its officers interfere to arrest their progress.

"I comprehend that these views are not entertained in all parts of the country. The opinion of Judge Beatty in the case of The Coeur de 'Alene Mining Company, against the Miners' Union, of Wardner, is a full recognition of the right claimed here by complainant; in his discussion he seems to go upon the ground that because the government has jurisdiction of an action by a citizen of another State to recover property of which he has been deprived, and demands which may be due to him, that therefore the Federal authority may be invoked to protect the citizen in the enjoyment of his property against lawless violence in the first instance. I am unable to accept that view. I do not appreciate the force of his argument. I must say that with bands of men, some of them, at least, bent upon plunder and the

overthrow of civil authority in all parts of the country, I cannot understand that wherever they come upon the property of a citizen of another State, and do some act of violence to that property, the power and authority of the Federal government may be invoked for protecting that property from injury, while a citizen of a State in which the act may be committed may call in vain for such assistance. I am unable to reach that conclusion; and so I feel compelled to deny this application. I do it with some reluctance, as differing from the views that have been expressed by my brethren in other districts; but these matters are not altogether of today. These things have been going on for some time, and they have been somewhat in the minds of all thoughtful men; and we have occasion to reflect upon them very seriously. I must say that it is my opinion that the peace and good order of society in this State is committed entirely by the Constitution of the United States and by the constitution of this State, to the authorities of the State. If the government of the State has fallen into the hands of socialists, as it certainly has, or of imbecils, as is probably true, that is our misfortune; but we do not thereby acquire the right to assume control of affairs on the part of the Federal government."

Digested, this means that for two reasons the Court had no jurisdiction of this case—first, because the allegations of the bill show that there could be no possible defense and hence no trial or controversy; and second, because if the Court should entertain jurisdiction, the relief granted complainant would necessarily restrain the respondents from violating the laws of the State of Colorado, which would be an infringement upon the rights of that State and beyond the prescribed powers of the Federal government.

As for the first reason, we apprehend that the learned judge himself will not, upon reflection, place

much stress upon it. The bill certainly presents a cause for the consideration of a court of justice. It also contains all the essentials of a suit cognizable by the courts of the United States. The complainant is a citizen of the State of West Virginia; the respondents are all citizens of the State of Colorado; the money value in controversy is alleged to be more than two thousand dollars. That his position may not be misunderstood, we repeat the language of Judge Hallett:

"It is not a suit or controversy such as is mentioned in the Constitution and laws of the United States, of which a Federal court may have jurisdiction, because there is nothing for trial; there is nothing for discussion. If we entertain this bill, it is not to be supposed that the defendants mentioned therein will come before the Court or in any way contest the right of the complainant to the possession of this property, and to employ such persons as it sees fit for such compensation as such persons may be willing to accept, in and about the work of carrying on the mine."

The same language could be employed concerning an action of ejectment, a suit upon a promissory note, and indeed, any suit wherein the plaintiff files a good complaint. If we accept the plaintiff's statements as true, there is nothing in controversy and the only trial will consist in the entry of judgment. But a different rule than this must be applied in determining what is a suit or controversy. A general denial of the allegations of the complaint always presents an issue and is, in fact, the most common issue, both at law and in equity. The defendants in the case at bar probably would have denied the essential allegations of the complaint and there would have

been for trial before the Circuit Court the question of the truth or falsity of these allegations.

The law must undoubtedly be that if a suit or controversy is recognized as such, at the present day, by courts of equity, in our States or in England, it must be a suit or controversy within the meaning of those words as used in the Constitution of the United States, and, if the citizenship is sufficient, can be properly brought in the Federal courts. If the State courts and English courts have entertained similar bills and granted the relief asked for, then it is a suit or controversy. That the present weight of authority is in favor of entertaining suits of the character set forth in the bill filed below, seems to admit of little question. We refer the Court to the following authorities:

Arthur vs. Oakes, 63 Fed. Rep., 310.

Spinning Company vs. Riley, L. R. 6 Eq., 551.

Cogley on Strikes and Lockouts, Sec. 33.

Creighton vs. Dahmer, 35 Am. St. Rep., 666 and note.

Murdock vs. Walker, 25 Pac. Rep.

Sherry vs. Perkins, 147 Mass., 212.

Emack vs. Kame, 34 Fed. Rep., 46.

Casey vs. Typographical Union, 45 Fed. Rep., 135.

Coeur d'Alene Mining Co. vs. The Miners' Union, 51 Federal.

Hagin vs. Blindell, 56 Fed. Rep., 40.

28 Am. Law Rev., 268.

In re Debs, 158 U. S., 564.

We call the Court's attention especially to the citation from the American Law Review, for the rea-

son that Judge Seymour D. Thompson has always been most jealous of the Federal courts as to what he calls usurpation of power, and yet he says that jurisdiction to issue writs of injunction in cases of this kind rests upon elementary principles and is too clear to admit of doubt. Aside from authority, however, we believe that, if it were a new question, this Court would lay down the broad proposition that it is the duty of a court of equity, in a case like the one described in the bill of complaint filed in the Court below, to stretch forth its hand and protect the complainant in the enjoyment of its property. It has always been the boast and glory of equity that its remedies change with the advance of civilization, and that defendants and wrongdoers cannot by devising new means to defraud people of their rights, screen themselves behind established and unchangeable rules. And as Judge Dillon has said in his course of lectures before the students of Yale College, "in consequence of modern inventions, aggregations of capital, and changed social conditions, I am inclined to think that at no previous period has this method of legal growth and change been in more constant and active operation than at the present time."

Dillon's Laws and Jurisprudence of England and America, page 5.

What we have termed the second ground upon which the Court denied jurisdiction, is even more untenable. The mere fact that the taking of jurisdiction would result in restraining the defendants from violating the criminal code of the State of Colorado, is no ground for refusing to interfere. Courts of equity, whether State or Federal, do not restrain the threatened commission of crime *per se*, but if in the

exercise of their jurisdiction this result necessarily or incidentally follows, they do not thereby abrogate their functions and dismiss the injured complainant with no relief, and society should rejoice at such a result, rather than deprive their Courts of this power. It is much better that people should be restrained from committing an unlawful act by the due and orderly progress of a civil trial, than that they should actually sin and put society to the expense and trouble of awarding punishment. A criminal code is a writ of injunction issued by the legislature. The criminal courts sit to punish contempts of this writ. A court of equity may in many instances prohibit the same act, but this does not add to, detract from or interfere with the criminal code or the criminal courts. The writ issued by the legislature is general in its term, unlimited in time and for the protection of society at large. The writ issued by a court of equity is directed to particular persons, is always within the control of the court, and intended for the protection of the property of specified persons from certain named acts. There is no interference theoretically or practically.

The confusion of the Court below can be best seen by repeating again the language of Judge Hallett:

"Upon grounds which are well understood by all lawyers, the police power in the matter of *preserving the peace and good order of society*, the matter of protecting people in the possession and enjoyment of property against those who would take it away from them by force and violence is entirely committed to the State. The Federal government does not have and does not claim to have any authority whatever in respect to such matters."

The italics are ours. They show that the Court

believed this bill was brought for the purpose of preserving the peace and good order of society. It was nothing of the kind. It was brought to restrain certain named defendants, an infinitesimally small portion of society, from carrying out in Colorado a conspiracy to deprive a citizen of the State of West Virginia of its property. Incidentally, perhaps, the defendants named would have been prohibited from committing a crime against the laws of the State; and the granting of an injunction by the Federal Courts with the power of a national government at its back, would probably have had a wholesome effect upon others than the defendants and restrained them from carrying out similar conspiracies against the property of other parties. This result, however, ought not to be deplored or oust the Court of jurisdiction, but rather rejoiced at and make the Court more ready to listen to the prayers of complainant.

And again the learned judge says:

"If any citizen of another State comes into this State, he is while here entirely subject to the control of the State, and he must rely upon the State authorities for protection of his person. If he is assaulted, he must look to the State to protect him from assault. It is true that when any one assails him, after the injury is committed, he may sue in the Federal Courts for damages for the injury done him, but that does not invest the Federal government or its Courts with authority to protect him in the first instance from such assault. And so in regard to property—if it be taken from him, or converted by other people, destroyed, he has his action for such property in the Federal Courts, but the circumstance that the Federal government has jurisdiction of such actions, and allows him to assert his right in the Federal Courts, does not, it seems to me, give the

Federal government the police power to protect him in the first instance from such wrong."

If the rights of citizens are truly stated in this language, the result is to be deplored. If non-resident citizens are to stand idly by while their property is taken and destroyed by insolvent and irresponsible persons, and call in vain upon the authorities of the State for protection, and be told by the Federal Courts that all they can do is to commence a suit against such persons for damages after the property has been destroyed, the sooner we know it the better. If the jurisdiction of the Federal Courts extends no further than to give damages for wrongs committed, and cannot be exercised to prevent the commission of the wrong in the first instance, it is lamentably deficient. But this Court has announced a different conclusion. In the case of In re Neagle, 135 U. S., 1, Mr. Justice Miller says:

"If a person in the situation of Judge Field could have no other guarantee of his personal safety, while engaged in the conscientious discharge of a disagreeable duty, than the fact that if he was murdered his murderer would be subject to the laws of a State, and by those laws could be punished, the security would be very inefficient. The plan which Terry and wife had in mind of insulting and assaulting him and drawing him into a defensive physical contest, in the course of which they would slay him, shows the little value of such remedies. We do not believe that the government of the United States is thus inefficient, or that its Constitution and laws have left the high officers of the government so defenseless and unprotected."

Neither has the Constitution and laws left the *property* of non-resident citizens of States so defenseless and unprotected. The Court

below in this case failed to make any distinction between persons and property. The Federal Courts will not prevent a threatened assault upon the *person* of a non-resident citizen; and will entertain a suit for damages after the assault has been committed, because the one is within its powers and the other is not. The threatened assault is an offense against society—against the peace and dignity of the State, and is not against the peace and dignity of the United States. After the assault has taken place the criminal side is still only a matter for the consideration of the State Courts, and is only punishable there; the question of damages is a controversy between two persons, and being between citizens of different States may come before the Federal Courts. In case of threatened assaults on *property* we have a controversy between individuals to start with, and if the diversity of citizenship exists, one that is within the jurisdiction of the Federal Courts. The Constitution gives jurisdiction over controversies between individuals, but not those arising between society and the individual. The bill of complaint in this case presented a controversy between individuals and between individuals alone.

The fear of encroachment upon the rights of the State as to the preservation of peace and good order is unfounded. Even admitting that the Court by taking jurisdiction would tend to keep the peace, a duty incumbent on the State, would not divest it of a power conferred by the Constitution and laws. Cases frequently arise where the Federal government incidentally keeps the peace. During the strikes of 1894 the injunctions granted by the Federal Courts at the suit of the United States, and in those cases

where the property was in the hands of receivers appointed by Federal judges, did more than anything else to preserve the peace. And the Court that denied the injunction in this case granted the same relief in cases concerning interstate commerce that was given in other Federal tribunals. And yet the power to regulate commerce is no higher or more binding than that of deciding controversies between citizens of different States. If the peace can be kept in the one case, it can in the other.

But this Court has passed directly upon this proposition. Mr. Justice Bradley so clearly stated the rule that it should silence all discussion. He said:

"Somewhat akin to the argument which has been considered is the objection that the deputy marshals authorized by the act of Congress to be created, and to attend the elections are authorized to keep the peace; and that this is a duty which belongs to the State authorities alone. It is argued that the preservation of peace and good order in society is not within the powers confided to the government of the United States, but belongs exclusively to the States. Here again we are met with the theory that the government of the United States does not rest upon the soil and territory of the country. We think that this theory is founded on an entire misconception of the nature and powers of that government. We hold it to be an incontrovertible principle, that the government of the United States may, by means of physical force, exercised through its official agents, execute on every foot of American soil the powers and functions that belong to it. This necessarily involves the power to command obedience to its laws, and hence the power to keep the peace to that extent."

Ex parte Siebold, 100 U. S., 371.

If the provision that "Congress may at any time

make or alter such regulations" made as to holding elections for Senators and Representatives gives the power to keep the peace, so the power to decide controversies between citizens of different States confers the same right. Every power granted the government of the United States is of equal dignity and importance, and carries with it the same grant of incidental powers necessary to its complete enjoyment. The authority to determine controversies between citizens of different States carries with it the power to keep the peace whenever necessary, just as much as the power to declare war and raise armies carries with it the right to use force and break the peace. And the Court, at the last term, decided a case practically conclusive of the one at bar. Both the right of equitable relief and the bug-bear of interfering with the rights of the States were disposed of.

In re Debs, 158 U. S., 564.

But there are still other grounds set forth in the supplemental bill upon which the Court below should have taken jurisdiction. We desire simply to call attention to these with a reference to the section of the Revised Statutes of the United States, or the Constitution upon which we claim they rest.

First—The complainant alleged that it was prevented from performing acts necessary to acquire title to a portion of the public domain; those acts being the development of its claims, application to the Surveyor General for an order of official survey, the actual survey by the proper Deputy United States Mineral Surveyor, application to the Land Office for pat-

ent, posting of notice, and all things required by the federal statutes and Land Department to secure patent. This Court has decided that a conspiracy to deprive one of the right to locate public land of the United States is a conspiracy to deprive him of the rights, privileges and immunities granted and secured to him by the Constitution and laws of the United States.

United States vs. Waddell, 112 U. S., 76.

Under this authority the right to take up a portion of the public domain as a mineral claim is a privilege and right granted and secured by the Constitution and laws of the United States. Any interference with that right, or a conspiracy to interfere, gives rise to a controversy arising under the laws of the United States.

Second—Complainant alleged that the respondents were preventing it from going upon mineral lands belonging to the United States, and mining and exploring the same. The entire Cripple Creek district is alleged in the complaint to be, and as a matter of fact is, a portion of the public domain of the United States; the paramount title to the same is in the United States and by the Revised Statutes of the United States all mineral lands are declared to be open and free to exploration, occupancy and possession.

Revised Statutes, section 2319.

The act of the respondents was an interference with this right.

Third—The complainant alleged that the respondents had entered upon the public domain and erected an unlawful enclosure and had obstructed free passage across the public domain of the United

States, to the detriment and injury of the complainant as a citizen of the United States, and this in direct violation of an act of Congress upon this identical subject.

Supplement to the Revised Statutes, pages 477 and 478.

Fourth—The complainant alleged that the respondents had conspired together to go upon the premises of the complainant and deprive it of the equal protection of the laws and of certain immunities and privileges guaranteed to it by the Constitution and laws of the United States.

Revised Statutes, sections 1980 and 5508.

Fifth—The complainant alleged that the respondents, by their acts in conjunction with the officials of the State of Colorado, had deprived it of its property without due process of law, and that it had been denied the equal protection of the laws, contrary to the provisions of the Fourteenth amendment to the Constitution of the United States. The bill alleged that the executive authority of the State of Colorado was in collusion with the respondents and when appealed to had wholly deprived the complainant of the equal protection of the laws, by refusing to give it protection, and by actually threatening to prevent the peace officers of the county in which complainant's property was situated, from executing the writs of courts and performing their sworn duties. This Court has decided that where a similar state of facts exist, the Federal authorities have a right to interfere.

Ex parte Virginia, 100 U. S., 339.
Yick Wo. vs. Hopkins, 118 U. S., 356.

The principles announced in these decisions would of themselves have justified the Court in assuming jurisdiction.

We think this brief exposition of the points relied upon by the appellant is sufficient for the present consideration of the Court.

C. S. THOMAS,

W. H. BRYANT,

Solicitors for Appellant.

Office Supreme Court U. S.
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IN THE SUPREME COURT OF THE UNITED STATES.

THE RAVEN GOLD MINING COMPANY,
Appellant,
vs.
THE MINERS' UNION OF ALTMAN *et al.*,
Appellees.

No. 934

Brief and Argument of Appellant.

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IN THE SUPREME COURT OF THE UNITED STATES.

THE RAVEN GOLD MINING COMPANY,	*Appellant,*
vs.	
THE MINERS' UNION OF ALTMAN *et al.*,	*Appellees.*

Brief and Argument of Appellant.

I.

STATEMENT OF THE CASE.

This suit was commenced in the Circuit Court for the District of Colorado, on the 26th day of May, A. D. 1894, by the filing of the bill of complaint. The plaintiff was The Raven Gold Mining Company, a corporation organized under the laws of West Virginia. The respondents were The Miners' Union of the town of Altman, The Miners' Union of the town of Victor, The Miners' Union of the town of Anaconda, and The Miners' Union of the town of Cripple Creek, which were certain unincorporated associations of men, all of whom were citizens of the State of Colorado, and against a large number of individual defendants, all of whom were citizens of the same State. Upon the filing of the bill, a temporary injunction was asked, which, after due argument, was denied by the Court upon the ground that the subject matter of the bill did not present a cause or controversy within the meaning of those terms as used in the Consti-

tution of the United States. Counsel for appellant afterwards amended the bill, and on the 29th day of May, 1894, this supplemental and amended bill was presented to the Court and a temporary restraining order or injunction asked, which, after further argument, was also denied by the Court, and the bill finally dismissed upon the same ground as before, that this was not a cause or controversy within the meaning of those terms as used in the Constitution of the United States. The plaintiff immediately appealed to this Court, under the provisions permitting appeals, where the only matter determined was the jurisdiction of the Court. Upon motion, the case has been advanced and is now to be heard.

The amended or supplemental bill of complaint filed in the Court below was the same as the original bill, with some additions, and was as follows:

"Humbly complaining, your orator, The Raven Gold Mining Company, a corporation organized under the laws of the State of West Virginia, and a citizen of said State, but authorized to do business in the State of Colorado by virtue of a full compliance with the statutes of said State, files this its supplemental bill of complaint, its said original bill having been filed upon the 25th day of May, A. D. 1894, and the matters herein mentioned having occurred, or a large part of them, since the filing of said original bill, against The Miners' Union of the town of Altman, The Miners' Union of the town of Victor, The Miners' Union of the town of Anaconda, and The Miners' Union of the town of Cripple Creek, certain unincorporated associations of men who are citizens of the State of Colorado; Hugh O'Connell, Charles Cohn, Charles Redward, David Jamerson, A. D. Cassad, Fred Todd, J. W. Cogswell, Walter Russell, William Puckett, William McClusky, Patrick Shea, Thomas Pearce, John Walsh, J.

K. Kofford, Cass Hoeffel, Lee Hendrick, —— McCarthy, whose first name is to your orator unknown; —— O'Connell, whose first name is to your orator unknown; John Wolfamn, and John Calderwood, James Lyons, Thomas Gannon, George McMillen, Frank Wolf, —— McKinnsey, whose first name is to your orator unknown; A. Morrison, Michael Walsh, P. Whalen, —— McNamara, and —— Ganhan, whose first names are to your orator unknown, all citizens of the State of Colorado, your orator humbly complaining of said respondents in the following particulars, to wit:

First—That this is a controversey and suit between citizens of different States; that the amount involved therein, exclusive of interest and costs, exceeds the sum of $2,000, and that certain questions arising under the Constitution and Laws of the United States are involved therein, in that your orator, a citizen of the State of West Virginia, has been deprived and is threatened with a continuance of said deprivation of its property rights and of privileges and immunities guaranteed to it by the Constitution and Laws of the United States.

Second—Further complaining, your orator respectfully shows unto your honors that it holds the possessory title to two certain lode mining claims situated in Cripple Creek Mining District, County of El Paso and State of Colorado, known as and called the Raven and Princess E. lode mining claims, and that it and its grantors have been the owners of said possessory claims for a long period of time, to wit, for a period of more than two years last past, and until the happening of the things hereinafter set forth they were in the undisturbed and peaceable possession thereof; that your orator's grantors were

Edmund R. Stark and Edwin M. De La Vergne, and that said mining claims were conveyed to your orator some time during the month of April, 1894.

Third—Your orator, further complaining, alleges that its grantors, the said Edmund R. Stark and Edwin M. De La Vergne, for a period of two years prior thereto and up to and about the 1st day of February, 1894, were in the peaceful possession of said mining claims and engaged in the work of developing the same, and for the purpose of so working and developing the same had employed a large number of men who were willing to, and did of their own accord engage to work in shifts of nine hours each, and for which said work its grantors had been and were paying at the rate of $3 per man per day; that said men so employed as aforesaid contracted freely, willingly, and of their own accord to work and labor for the compensation aforesaid, and the work by them done, and the compensation by them received was wholly and entirely satisfactory to both your orator's said grantors and the said workmen.

Fourth—That on or about the 1st day of February, 1894, the above named defendants, and other persons co-operating and confederating with them, whose names are to your orator unknown, and which, when ascertained, your orator begs leave to be permitted to make parties defendant hereto, determined, agreed and conspired among themselves that eight hours should constitute a day's labor in the Cripple Creek Mining District, in which said district your orator's claims are situated, and that $3 for said day's labor should be the minimum compensation paid each man, and that no owner of any mine or mines should employ and no miner or workman should be permitted to work in or upon said mines in said district under any other conditions, and, in furtherance of said conspiracy and determination, the said respondents and their

co-conspirators caused all workmen and miners engaged in and upon said mines, and working the same under other conditions and terms than those agreed upon as above set forth, to cease their work, and did compel them to cease their work by means of threats of great bodily harm in the event they persisted, and, in the event of their continuing in such employment, did compel them to refrain and desist from said work, and that among others whom they thus, by threats and unlawful persuasions, compelled to cease work, were the workmen employed by your orator's grantors, in consequence whereof all the workmen employed by your orator's grantors were compelled and terrorized into abstaining from all further work of development and mining upon said mining claims, in consequence whereof the said mines became idle, and have remained idle from that time until the present, except certain development work which your orator's grantors had contracted with certain parties should be done, and, since the filing of the original bill in this cause, the said defendants and their co-conspirators, by means of their threats and unlawful persuasions, have compelled and persuaded said contractors to cease said work, for the reason that they would not comply with the terms and conditions agreed upon by said respondents and their co-conspirators.

Fifth—Your orator further represents unto your honors that the work upon said Raven Mine consists of a shaft and upper and lower tunnel, and that at the beginning of the mouth of what is known as the upper tunnel your orator's grantors have constructed an ore-house and blacksmith shop, said house being necessary and desirable for the proper conduct and prosecution of the development of said mine, and your orator, complaining, alleges that

the said tunnels for a great part of their distance are timbered with pine timbers, and the shaft, sunk to the depth of about 200 feet, is also timbered, while stopes and openings above the line of said upper tunnel have in certain places therein been heavily timbered to prevent the caving in of the walls thereof and the consequent destruction of the mine; that the destruction of said shaft, tunnels, ore-house and blacksmith shop and the timber therein would be a great and irreparable injury to your orator's property, and that the respondents above named have threatened and are continually threatening that in case your orator attempts to commence work upon said properties they will blow up the said ore-house and blacksmith shop and destroy the said tunnel and shafts and other workings by means of the explosion of giant powder, and in furtherance of said conspiracy your orator alleges that said respondents did, on or about the 24th day of May, 1894, blow up a certain shaft house belonging to The Strong Mining Company and utterly destroy the same, together with the machinery therein situated, to the value of several thousand dollars, did explode a keg of powder down the shaft of said Strong mine, destroying the timber therein, and did thereupon set fire to and destroy the wreck which was left of said property after the same had been exploded; that said act was committed because the said Strong Mining Company had endeavored to carry on work in their property contrary to the rules and regulationt prescribed by the respondent and their co-conspirators, and was an act in furtherance of the conspiracy and agreement theretofore entered into between the respondents above named and their fellow-conspirators, who are unknown to your orator, and for the purpose of compelling, terrorizing and coercing your orator and other mine owners to adopt the rules and regulations agreed upon by

said respondents, and your orator, upon information and belief, alleges that in case they attempt to work their said property contrary to the rules and regulations prescribed by said respondents and their fellow conspirators, their property will be similarly treated.

Sixth—Your orator further represents that in furtherance of said conspiracy the said respondents have terrorized, intimidated and overpowered many persons who are willing to accept the wages agreed upon between them and your orator and other mine owners, in said district, and have compelled said persons to leave the district, and have wounded, bruised and beaten many of them, so that some of them have since died, and have inaugurated such a reign of terror that no person dares to operate his mine without their consent, and no miner dares work in any property without their consent, and without complying with the terms and regulations agreed upon by them.

Seventh—Your orator further alleges that, by reason of the enforced idleness of his property, and the means it has been compelled to take for the purpose of protecting the same, it has been damaged by the acts of the respondents above set forth, in the sum of $5,000, and that the said respondents, together with their co-conspirators, threaten, and intend to, and will, unless prevented by the injunctive process of this honorable Court, and, in case your orator fail to agree upon the terms and conditions laid down by them, go upon your orator's premises and destroy their ore-house and blacksmith-shop, blow up and set fire, and otherwise destroy and injure their tunnels and shaft, thereby inflicting great and irreparable damage and injury upon your orator's property, and that if said shafts and tunnels are blown up,

the said property will cave in and it will be almost impossible to further work and develop the same, and unless your orator agrees to the terms laid down by the said respondents in regard to the working of said property, they will continue to terrorize, intimidate, and, if necessary, beat, bruise, wound, kill and murder any and all workmen whom your orator may employ, and prevent for an indefinite period and until your orator complies with said unlawful and illegal demands of the said repondents from working or otherwise developing or mining in and upon its said property.

Eighth—Your orator further alleges that it can procure men willing and auxious to work upon terms mutually to be agreed upon by and between your orator and the said men, and that if it is granted the protection of this Court, it will procure said men and work its said property; and your orator further alleges that said respondents above named are all of them wholly insolvent and unable to respond in damages in any suit which your orator may bring; that to recover damages for the many trespasses committed by said respondents will require and necessitate a great multitude of suits.

Ninth—Your orator further alleges that said respondents are all of them members of what is known as The Federated Miners' Union, an organization incorporated under the laws of the State of Montana, and that the various miners' unions above mentioned and others are branches of The Federated Miners' Union; that they are unincorporated societies organized in the State of Colorado and are controlled and governed by the rules laid down by The Federated Miners' Union of the State of Montana; that said Federated Miners' Union in the State of Montana entered into similar and like conspiracies as those

above set forth, in and by which they attempted to coerce various mine owners in the State of Montana into submiting to their demands, and that they are attempting to do the same thing with the various other mine owners and miners in the Cripple Creek Mining District of the State of Colorado; that they have entered into a well organized and well defined conspiracy and propose that in case their demands are not complied with that they will destroy the property and prevent the working of the same by all parties who fail to agree to the terms and conditions of their said conspiracy, and that said respondents are in league with The Federated Miners' Union of the State of Montana and of other States, so that their conspiracy is not confined to the State of Colorado, but extends over the States of Colorado, Montana, Idaho and other western States of the Union, and they are all controlled and operated by a central authority.

Tenth—Your orator further alleges that the Princess E. and Raven lode mining claims above mentioned are located upon the public domain of the United States; that the paramount title is in the United States, and your orator can only secure said title by complying with the terms of the statutes of the United States in such case made and provided; that the acts of the respondents above named prevent and hinder your orator from complying with the requirements laid down by the statutes of the United States, and your orator, by reason of said acts, is prevented, and the said respondents threaten to continue to prevent your orator's full compliance with said acts.

Eleventh—Your orator further represents and shows that the lode mining claims above mentioned belong to your orator, are valuable mineral deposits belonging to

the United States; that, by the statutes of the United States, they are declared to be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase by citizens of the United States; and your orator further shows that it is a citizen and all its stockholders are citizens of the United States; that it has the right, by virtue of the statutes of the United States, to the occupation and purchase of said lands above mentioned, and that, by reason of the acts and the unlawful conspiracy of the said respondents, it has been denied the right of occupation and exploration of said property, and that said respondents threaten to continue to deny to your orator its right to explore and occupy said lands and ultimately to purchase the same from the government of the United States.

Twelfth—Your orator further represents and shows unto your honors that, in furtherance of the conspiracy set forth as aforesaid, the respondents have erected upon a certain portion of the public domain of the United States, near your orator's claims—which said portion of the lands of the United States has been located upon by certain other parties or persons, but the paramount title to which still remains and is in the United States—a certain fort or enclosure, some 200 feet square, the walls of which are constructed of stone and logs, and have conveyed into said enclosure munitions of war, giant powder and other destructible materials, for the purpose of preventing your orator and the owners of adjacent lode mining claims from going upon their premises and working and operating the same; that said enclosure is upon the land belonging to the United States; that it is an unlawful enclosure, and is built and constructed without any claim or right of title to said premises, and without

any intention upon the part of the said respondents to claim said property, but solely for the purpose of preventing your orator and the owners of adjacent properties from working their said lode mining claims; that in addition to said unlawful enclosure the said respondents have conspired and agreed among themselves to prevent other parties from going upon the unoccupied public domain of the United States, and exploring the same with a view of determining its mineral value, and ultimately purchasing the same from the government of the United States; that they have denied and prevented their ingress and egress across lands belonging to the government of the United States, which have never been located or claimed by any person or corporation whatsoever; that they are proceeding to patrol the country surrounding said fortification for many miles, and preventing any person from going upon the same or passing over the public domain of the United States, so that by reason of said conspiracy of the respondents and their co-conspirators and the acts aforesaid your orator and its workmen are prevented from crossing the unoccupied public domain of the United States, or from going to their said property and working thereon, and the unlawful enclosure above mentioned is a continual menace and nuisance to your orator, and prevents it from working, developing or exploring its mining claims above set forth.

Thirteenth—Your orator further represents and shows unto your honors that the said respondents above named and their co-conspirators have conspired together to go on the premises of your orator for the purpose of depriving it, both directly and indirectly, of the equal protection of the laws, the equal privileges and immunities

under the laws, and for the purpose of preventing and hindering the constituted authorities of the State of Colorado from giving and securing to your orator, within the State of Colorado, the equal protection of the laws, in that they have conspired to prevent your orator from working and developing its said property and contracting freely, as it sees fit, with other persons, and to deprive your orator of its property and prevent its property from being of any value to your orator, by reason of the acts and things above set forth committed by the said respondents, and all of said respondents above named have been engaged in said conspiracy, and have had knowledge thereof, and have failed to prevent or attempt to prevent the same from being consummated.

Fourteenth—Your orator further represents and shows unto your honors that it has been and is now denied by the constituted authorities of the State of Colorado the equal and due protection of the laws to which, under the Constitution and the laws of the State of Colorado, it is justly entitled, and has been deprived of its property without due process of law, in this, to wit:

That said acts and doings of the respondents above named commenced against your orator's grantors on or about the 1st day of February, 1894, at which time, by reason of the acts and doings of the respondents above named, your orator's grantors were compelled to cease work upon the property belonging to your orator; that some time afterwards, and on or about the 13th day of March, 1894, your orator's grantors, in connection with certain other owners of property, applied to the District Court of the State of Colorado, sitting in and for the County of El Paso, for a certain writ of injunction directed against the respondents above named and their

co-conspirators, to prevent and enjoin them from doing the acts and things herein complained of; that said District Court did grant said writ of injunction, and the same was issued, but that the Sheriff of said county was unable to execute the same, and said writ of injunction has proved wholly unavailing and of no force whatsoever, and your orator's grantors have since dismissed said suit, so far as they are concerned, the Sheriff of said county, although perfectly willing to execute the same, having been up to this time wholly unable to give your orator any relief by virtue thereof, the respondents by means of their fort and fortification above set forth and the great numbers of men whom they have under their control, all of whom are well armed, having so far been able to withstand any and all efforts made by the Sheriff of said county to put your orator in possession of said property, or permit him to work and develop the same; that the Sheriff of said county, in the further exercise of his duties and to protect your orator in the premises, did, in said month of March, call upon the Governor of the State of Colorado for assistance, and the Governor did order certain portions of the State militia to assist the said Sheriff, but, upon ascertaining the purpose for which he had been called upon, did announce that the militia of the State should not be used for the purpose of protecting private property, a portion of which property was your orator's, and did recall said militia, which act did greatly encourage the respondents above named in their unlawful conspiracy against the rights of your orator and other property owners in said Cripple Creek Mining District; that after the return of said militia, the said respondents above named and their co-conspirators were left in full possession of the field, and were permitted to do as they saw fit, and have ever since prevented your orator and other

property owners in said Cripple Creek Mining District from working their said property, except upon compliance with their unlawful terms and conditions, and your orator further represents and shows that thereafter and on or about the 23d day of May, 1894, the Sheriff of said county, having determined that the law should be upheld, and that your orator and other mine owners should be protected, called to his assistance a large number of Deputy Sheriffs, as your orator is informed and believes, to the number of several hundred, and did start into said Cripple Creek Mining District with the intention of serving certain writs and processes and of guarding your orator's and other mine owner's property, and putting your orator and other owners into the peaceable and undisturbed possession of their property; that this fact was at once communicated to the executive officers of the State of Colorado, and the Attorney General, in response to an inquiry submitted to him by the chief executive of the State, did advise the said executive that the acts of the said Sheriff were unlawful, which said opinion of the Attorney General is in words and figures as follows, to wit:

"ATTORNEY GENERAL'S OFFICE,

"DENVER, COLO., May 25, 1894.

"*Hon. Davis H. Waite, Governor of Colorado.*

"DEAR SIR: In answer to your inquiry of this date, submitted to the office of the Adjutant General, I desire to say—

"That the organization of an armed force of men in Arapahoe County to march to or enter El Paso County for the purposes alleged is conspiracy to do or aid in any unlawful act, and all persons members of such armed force, or co-operating to organize or to send or transport

the same into one county from another, are guilty of a conspiracy to do an unlawful act, and the deputizing of such men to act as Deputy Sheriffs by the Sheriff of El Paso County is a violation of the law. The law does not contemplate the appointment of residents and citizens of Arapahoe as its Deputy Sheriffs of El Paso County. To keep and preserve the peace, to quiet and suppress all affrays, riots and unlawful assemblages and insurrections, for the service of process in civil or criminal cases, and in apprehending or securing any person for felony or breach of the peace, the Sheriff, Under Sheriff, Deputy Sheriff, Coroner and Constables may call to their aid such persons of their county as they may deem necessary, but they have no authority to call to their aid any persons from another county to act as a *posse comitatus* or as Deputy Sheriffs. Moreover, under the Legislative Act of 1891, Deputy Sheriffs can only be appointed under the direction of the Board of County Commissioners. If the Sheriff and his legal deputies of El Paso County cannot, with a *posse comitatus*, keep and preserve the peace of that county, and quiet and suppress all affrays, riots, unlawful assemblages and insurrections therein, it is then the duty of the Sheriff to call upon the chief executive of this State for the aid of the militia.

"In case the Sheriff of El Paso County uses the armed force above described as Deputy Sheriffs or as a *posse comitatus*, and a riot or insurrection is precipitated by reason thereof, or if said armed force acts independently of such Sheriff and a riot or insurrection ensues by reason of an armed conflict with others, the chief executive of the State should preserve the peace of the commonwealth, even if it should become necessary to call out the entire military force of the State. If the peace cannot be preserved otherwise, martial law should be declared in

the particular district, and all violators of public order, including the said armed force, should be summarily dealt with, that the dignity of the State may be maintained inviolate.

"Yours truly,

"EUGENE ENGLEY,

"*Attorney General.*"

That, thereupon, as your orator is informed and believes, the Governor of the said State did announce that in case the Sheriff of said County of El Paso should proceed to restore your orator and other mine owners to the possession of their property, he would call out the militia of said State to prevent said Sheriff from so doing. Your orator further represents that the acts and doings of the said Sheriff were in accordance with the law in such case made and provided and were simply in furtherance of the protection of your orator's property. Your orator further represents, upon information and belief, that the Governor of said State, the Attorney General and the Adjutant General of said State, who is in command of the militia, are in league and full sympathy with the respondents and their co-conspirators above named, and the Adjutant General of said State whom the Governor places in command of the militia, and who was placed in command of the same when they were sent to the Cripple Creek Mining District, in March, 1894, is the paid attorney of the respondents above named, and appeared for them when some of them were arrested and tried for their unlawful acts, and that the Attorney General aforesaid did, on the 28th day of May, 1894, visit and consult with the respondents above named, and, as your orator is informed and believes, did inform them that the State government would take no action contrary to their interests. Your orator further represents and shows that in furtherance of

the design upon the part of said officials to aid the said respondents and their co-conspirators, the Governor of said State did, on, to wit, the 26th day of May, 1894, issue his certain proclamation, which said proclamation was intended to and did encourage the said respondents above named in their conspiracy against the rights of your orator, said proclamation being in words and figures as follows, to wit:

WHEREAS, There is at present throughout the State a very general excitement and unrest, and,

WHEREAS, Affrays, riots, unlawful assemblies and insurrections have occurred in various parts of Colorado, the attention of all good citizens is called to the following provisions of the Constitution and laws of the State:

"*First*—The right of no person to keep and bear arms in defense of his home, person and property, or in aid of the civil power when legally summoned shall be called in question." (Const. Colo., Bill of Rights.)

This is a personal and individual right, which does not authorize the assembling of a multitude of armed men by any individual or corporation, even to enforce an undoubted right. Courts are established for that very purpose. It is an extreme case where an individual may properly take the law into his own hands. He may always defend his life, person and property when directly attacked, but beyond that he must act, to use the words of the Constitution, "in aid of the civil power and be legally summoned."

Many States besides Colorado have the same provision in their Constitutions, and the Supreme Court of one of these, Washington, has decided that "The right to bear arms shall not be construed as authorizing

individuals or corporations to organize, maintain or employ an armed body of men." (Wash., 1, 24.)

Second—Section 5, Article IV., State Constitution, says: "The Governor shall be commander-in-chief of the military forces of the State, except when they shall be called into actual service of the United States. He shall have power to call out the militia to execute the laws, suppress insurrections or repel invasions. * * * "

Ordinarily, the Governor of a State does not act until the county authorities, having failed to quell an insurrection, call upon the State for aid, but the duty of the Governor does not depend upon such a call. If the insurrection exists, if it is of sufficient magnitude to prevent the execution of the laws, and especially if it has destroyed the lives of citizens of the State, the executive must act.

In full accord with the Constitution, which makes the Governor the sole commander of the military forces of the State, Section 3119, page 1713, Mills' Annotated Statutes, says: "It shall not be lawful for any body of men whatever other than the regularly organized National Guard of the militia or the troops of the United States to associate themselves together as a military organization. * * * "

The militia of the State of Colorado is defined in Section 1, Article XVII., State Constitution, as follows:

"The militia of the State shall consist of all able-bodied male residents of the State, between the ages of eighteen and forty-five years, except such persons as may be exempted by the laws of the United States or of the State."

Powers of the Sheriff.

According to the Constitution, the supreme power to call out the militia is solely in the hands of the executive, and any statutory provisions that may have been enacted by the General Assembly of the State, except those provisions of the common law of England and the statutes which provide that the Sheriff of the State has certain powers to summon aid in the service of process and the *posse comitatus* of their respective counties, in case of riot and insurrection, are in violation of the organic law and void, so far as they nullify or usurp the power in such cases of the executive authority of the Governor of the State. The power assumed by the Sheriffs of certain counties to make deputies and specials outside of their respective counties, or to act outside of their respective counties, or within their counties, except as the regular *posee comitatus*, under the English common law, or practically to allow either a domestic or foreign corporation, like the Pinkerton Detective Agency, for instance, to enlist from the militia and use an armed and hired organization for warlike purposes, whether the term of service be long or short, is a violation of the Constitution of the State.

The claim made by individuals and corporations, that because they are the undisputed owners of real and personal property, which they have reason to believe is in danger by prospective riot and insurrection, is good ground to call upon the city and county authorities for protection by the *posse comitatus* from actual overt acts, after the ordinary civil power of the city and county is insufficient to preserve the peace, but it does not authorize the levy of war. Whenever a riot reaches the dignity of an insurrection and the Sheriff is unable to suppress

it by the power of his county, he should act, and is obliged to act, in subordination to the orders of the Governor of the State, who, according to the Constitution, "shall have power to call out the militia to execute the laws, suppress insurrection or repel invasion."

The power of the State executive, though supreme within the limits prescribed by the Constitution, terminates when the constitutional duty is performed. The military power of the State may rightfully be invoked to suppress actual insurrection, but cannot be kept in the field simply to guard private property.

As to the difficulties at Cripple Creek, and the merits of the controversy between the miners and the mine owners, I have no personal knowledge. Some months ago I was informed by the Sheriff of El Paso County that such a condition of affairs existed in the western part of the county; that civil and criminal process could not be served, and that there was an armed resistance to authority which the power of the county was wholly unable to overcome. In accordance with the repeated requests of the Sheriff, and after information had been received that the Sheriff himself had been killed (a false statement), five companies of the National Guard were ordered to Cripple Creek. Upon their arrival, the commanding officer found no organized force in the field. The miners claimed that they never had violated, or had intended to violate, any law. Some thirty or more miners voluntarily submitted to arrest on criminal process, were taken to Colorado Springs and incarcerated in jail.

They were mostly admitted to temporary bail, and all that were tried were acquitted. In the present difficulty there have been no arrests, to my knowledge, and it seems to be an attempt to enforce so-called rights by the strong hand and not by an appeal to

the Courts. In my judgment, the parties to this difficulty, if reasonable and patriotic, might agree to some peaceable settlement of their difficulties, and I most respectfully recommend arbitration as in the best interest of all concerned.

But there is no doubt, in the mind of the executive, what is his duty in the premises. It is to suppress the insurrection now prevailing in the County of El Paso, even if it becomes necessary to call out the military power of the State.

All good citizens are hereby commanded to lay down their arms and cease all acts in violation of the State.

Done at Denver this 26th day of May, A. D. 1894.

DAVIS H. WAITE,
Governor of Colorado.

NELSON O. MCCLEES,
Secretary of State.

LYMAN B. HENDERSON,
Deputy.

By reason of which acts, your orator alleges that the constituted authorities of the State of Colorado are in league with the respondents above named, and will wholly prevent your orator from acquiring the possession of his said property and from working the same, and that, by reason thereof, your orator has been deprived of its property without due process of law, and denied the equal protection of the laws, and such deprivation is threatened to continue and will continue unless your honors intervene to protect your orator in the premises; that, by the Constitution and the laws of the United States, your orator cannot be deprived of his property without due process of law, or denied such equal protection of the laws.

Fifteenth—Your orator further alleges that, by reason of the acts and things above set forth, it has no remedy in a Court of law, and it is compelled to resort, in consequence, to the chancery side of this honorable Court for equitable relief, for due protection of its property and the enforcement of the rights guaranteed to it by the Constitution and the laws of the United States; that the urgency of the situation is too great to admit of its giving notice to the said respondents or any of them of its contemplated action, lest its property be destroyed or injured before this application could be heard upon notice.

Your orator therefore respectfully prays your honors to extend to your orator the protection of the Court of chancery and grant to your orator a writ of injunction, directed to the respondents above named, their and each of their servants, attorneys, agents, employes and representatives, commanding and enjoining them and each of them and every of them and their agents, attorneys, officers, servants and abettors from in any manner interfering with the plaintiff herein in any of its work in or upon the said Princess E. and Raven lode mining claims mentioned in this complaint, and from interfering with your said orator in its exploration and possession of said claims upon the public domain, and from interfering with your orator and its employes from crossing the public domain in order to enter upon its said property and to abate and remove the fort or enclosure above mentioned as an unlawful enclosure and as a nuisance upon the public domain of the United States, and from in any manner, by force, threats or otherwise, making any attempt to intimidate any employes of the plaintiff herein or from attempting to prevent any employes of the said plaintiff from working in a peaceable, quiet and

lawful manner in or upon any part of the aforesaid mines or mining claims, or in or upon the said building of the said plaintiff therein or thereabouts, or in or upon any of the underground workings of the said plaintiff, or any part thereof, and that they, and each of the parties aforesaid, be further enjoined and restrained from attempting, by intimidating, threatening, or, by any force, threats, or intimidation, trying to prevent any employe of the plaintiff herein from working in or upon the aforesaid mines mentioned in the complaint herein, or in or upon the said ore-house, blacksmith shop, or in or upon any mining or other property of the plaintiff, or trom preventing any one from entering the service of the plaintiff herein, or in any lawful manner interfering with the business of the plaintiff in the employing of persons to work upon its said property, or from going upon any part of the said plaintiff's property without permission from this plaintiff or its agents or employes, so to do, or in any manner entering upon the workings of the plaintiff without its consent, or injuring, or attempting to injure or destroy or despoil said ore-house and blacksmith shop, or said tunnel, shaft-house connected therewith, or any of the timbers thereof until the further order of this Court, and restraining and enjoining them from the commission of any act which deprives your orator of its property or is contrary to equity and good conscience, and that upon a final hearing of the matters and things herein set forth said injunction may be made perpetual, and may it please your honors to grant the people's most gracious writ of subpœna, issuing out of and under the seal of this honorable Court, directed to the Marshal of said district, commanding the said parties and each and every of them personally to be and appear before this honorable Court upo n a day certain to be named therein,

then and there to stand to and abide by and perform all and singular the orders and decrees of the Court herein made and which to equity shall seem mete, and, in duty bound, your orator will ever pray, etc.

II.

Specification of Errors.

The only error contained in the record is the action of the Court in holding that it had no jurisdiction of this suit, for the reason that it is not a cause or controversy within the meaning of those terms, as used in the Constitution of the United States.

III.

Argument.

We believe the question involved in this case is of sufficient importance to warrant extended oral argument, although its determination, in our judgment, can be but one way. The position of the Court below is clearly and concisely stated in the following opinion of Judge Hallett:

"The bill presented this morning is by The Raven Gold Mining Company, a corporation organized in the State of West Virginia, against various societies having their headquarters in and about the town of Cripple Creek, called 'Miners' Unions,' and against a number of men who are connected with the societies. It appears from the bill that persons who are made defendants in the suit are workmen who have been employed in and about the mines of Cripple Creek, and have quit work, and are what are commonly called strikers. They are engaged with some violence in preventing the owners of

mines, the complainant with the others, from carrying on work in the mine by employing men who may be willing to work for less wages than the defendants care to accept, and who threaten to destroy the property of all who shall oppose them. They have destroyed some property in that neighborhood, and there is reason to believe that they will continue the work of destruction with the avowed purpose of compelling the owners of mines in that locality to pay the wages which they demand, and to employ only persons connected with the unions. There is no matter presented in the bill which can form the subject of an issue in respect to ownership or the right to occupy the mines in question. Clearly enough what is alleged against the defendants is in violation of law, and what they are doing is in defiance of the civil authority of the State, and with a view to overturn and overthrow the power of the government of the State. In my view, this is not a suit arising between citizens of different States, in any proper sense of that word or of the phrase.

"It is not a suit or controversy such as is mentioned in the Constitution and laws of the United States, of which a Federal Court may have jurisdiction, because there is nothing for trial; there is nothing for discussion. If we entertain this bill, it is not to be supposed that the defendants mentioned therein will come before the Court, or in any way contest the right of the complainant to the possession of this property, and to employ such persons as it sees fit, for such compensation as such persons may be willing to accept in and about the work of carrying on the mine. If any such matter should be presented, and they were disposed to contest complainant's right, it is not a matter which would admit of debate, because, upon principles which are too well understood to admit

of discussion, every man is entitled to the possession and use of his property, and to employ such persons as he sees fit in and about the business of carrying it on, and what is here asked is, that the Court shall exercise, as it seems to me, the police power of the State to protect the complainant in the possession of this property, and to preserve it from destruction at the hands of defendants. This, I think, is a matter that falls entirely within the jurisdiction and authority of the State. Upon grounds which are well understood by all lawyers, the police power in the matter of preserving the peace and good order of society, the matter of protecting people in the possession and enjoyment of property against those who would take it away from them by force and violence, is entirely committed to the State. The Federal government does not have, and does not claim to have, any authority whatever in respect to such matters. It interferes for the purpose of protecting the peace of society only upon the request and application of the authorities of the State, and upon the ground that the State is unable to protect its citizens in the possession of their property and in the enjoyment of their lives. If any citizen of another State comes into this State, he is, while here, entirely subject to the control of the State, and he must rely upon the State authorities for protection of his person. If he is assaulted, he must look to the State to protect him from assault. It is true that when any one assails him, after the injury is committed, he may sue in the Federal Courts for damages for the injury done him, but that does not invest the Federal government or its Courts with authority to protect him in the first instance from such assault.

"And so in regard to property—if it be taken from him or converted by other people, destroyed, he has his

action for such property in the Federal Courts; but the circumstance that the Federal government has jurisdiction of such actions, and allows him to assert his right in the Federal Courts, does not, it seems to me, give the Federal government the police power to protect him in the first instance from such wrong. If these men at Cripple Creek were a band of robbers going through the State and despoiling all upon whom they might come, this would be in violation of the law of the State. Every step of their progress would be marked by some crime against the laws of the State, but there would be no crime against the laws of the United States in anything that they might do, and the Federal government could not, either by its Courts or by its own act and by the direct agency of its officers, interfere to arrest their progress.

"I comprehend that these views are not entertained in all parts of the country. The opinion of Judge Beatty in the case of The Cœur d'Alene Mining Company, against The Miners' Union of Wardner, is a full recognition of the right claimed here by complainant. In his discussion, he seems to go upon the ground that because the government has jurisdiction of an action by a citizen of another State to recover property of which he has been deprived, and demands which may be due to him, that, therefore, the Federal authority may be invoked to protect the citizen in the enjoyment of his property against lawless violence in the first instance. I am unable to accept that view. I do not appreciate the force of his argument. I must say that with bands of men, some of them, at least, bent upon plunder and the overthrow of civil authority in all parts of the country, I cannot understand that wherever they come upon the property of a citizen of another State and do some act of violence to that property, the power and authority of the Federal government

may be invoked for protecting that property from injury, while a citizen of a State in which the act may be committed may call in vain for such assistance. I am unable to reach that conclusion, and so I feel compelled to deny this application. I do it with some reluctance, as differing from the views that have been expressed by my brethren in other districts, but these matters are not altogether of to-day. These things have been going on for some time, and they have been somewhat in the minds of all thoughtful men, and we have occasion to reflect upon them very seriously. I must say that it is my opinion that the peace and good order of society in this State is committed entirely by the Constitution of the United States and by the Constitution of this State to the authorities of the State. If the government of the State has fallen into the hands of socialists, as it certainly has, or of imbeciles, as is probably true, that is our misfortune, but we do not thereby acquire the right to assume control of affairs on the part of the Federal government."

Digested, this means that for two reasons the Court had no jurisdiction of this case—first, because the allegations of the bill show that there could be no possible defense and hence no trial or controversy, and second, because if the Court should entertain jurisdiction, the relief granted complainant would necessarily restrain the respondents from violating the laws of the State of Colorado, which would be an infringement upon the rights of that State and beyond the prescribed powers of the Federal government.

As for the first reason, we apprehend that the learned Judge himself will not, upon reflection, place much stress upon it. The bill certainly presents a cause for the consideration of a court of justice. It also contains all the essentials of a suit cognizable by the Courts of the United

States. The complainant is a citizen of the State of West Virginia; the respondents are all citizens of the State of Colorado; the money value in controversy is alleged to be more than than two thousand dollars. That his position may not be misunderstand, we repeat the language of Judge Hallett:

"It is not a suit or controversy such as is mentioned in the Constitution and laws of the United States, of which a Federal Court may have jurisdiction, because there is nothing for trial; there is nothing for discussion. If we entertain this bill, it is not to be supposed that the defendants mentioned therein will come before the Court or in any way contest the right of the complainant to the possession of this property, and to employ such persons as it sees fit for such compensation as such persons may be willing to accept, in and about the work of carrying on the mine."

The same language could be employed concerning an action of ejectment, a suit upon a promissory note, and, indeed, any suit wherein the plaintiff files a good complaint. If we accept the plaintiff's statements as true, there is nothing in controversy, and the only trial will consist in the entry of judgment. But a different rule than this must be applied in determining what is a suit or controversy. A general denial of the allegations of the complaint always presents an issue and is, in fact, the most common issue both at law and in equity. The defendants in the case at bar probably would have denied the essential allegations of the complaint and there would have been for trial before the Circuit Court the question of the truth or falsity of these allegations.

The law must undoubtedly be that if a suit or controversy is recognized as such, at the present day, by Courts of equity, in this country and in England, it is a

awarding punishment. A Criminal Code is a writ of injunction issued by the Legislature. The criminal Courts sit to punish contempts of this writ. A Court of equity may in many instances prohibit the same act, but this does not add to, detract from or interfere with the Criminal Code or the criminal Courts. The writ issued by the Legislature is general in his terms, unlimited in time and for the protection of society at large. The writ issued by a Court of equity is directed to particular persons, is always within the control of the Court, and intended for the protection of the property of specified persons from certain named acts. There is no interference theoretically or practically.

The confusion of the Court below can be best seen by repeating again the language of Judge Hallett:

"Upon grounds which are well understood by all lawyers, the police power in the matter of *preserving the peace and good order of society*, the matter of protecting people in the possession and enjoyment of property against those who would take it away from them by force and violence is entirely committed to the State. The Federal government does not have and does not claim to have any authority whatever in respect to such matters."

The italics are ours. They show that the Court believed this bill was brought for the purpose of preserving the peace and good order of society. It was nothing of the kind. It was brought to restrain certain named defendants, an infinitesimally small portion of society, from carrying out in Colorado a conspiracy to deprive a citizen of the State of West Virginia of its property. Incidentally, perhaps, the defendants named would have been prohibited from committing a crime against the laws of the State, and the granting of an injunction by the Federal Courts, with the power of a national government

at its back, would probably have had a wholesome effect upon others than the defendants and restrain them from carrying out similar conspiracies against the property of other parties. This result, however, ought not to be deplored or oust the Court of jurisdiction, but rather rejoiced at and make the Court more ready to listen to the prayers of complainant.

And again the learned Judge says:

"If any citizen of another State comes into this State, he is while here entirely subject to the control of the State, and he must rely upon the State authorities for protection of his person. If he is assaulted, he must look to the State to protect him from assault. It is true that when any one assails him, after the injury is committed, he may sue in the Federal Courts for damages for the injury done him, but that does not invest the Federal government or its Courts with authority to protect him in the first instance from such assault. And so in regard to property—if it be taken from him, or converted by other people, destroyed, he has his action for such property in the Federal Courts, but the circumstance that the Federal government has jurisdiction of such actions, and allows him to assert his right in the Federal Courts, does not, it seems to me, give the Federal government the police power to protect him in the first instance from such wrong."

If the rights of citizens are truly stated in this language, the result is to be deplored. If non-resident citizens are to stand idly by while their property is taken and destroyed by insolvent and irresponsible persons, and call in vain upon the authorities of the State for protection, and be told by the Federal Courts that all they can do is to commence a suit against such persons for dam-

ages after the property has been destroyed, the sooner we know it the better. If the jurisdiction of the Federal Courts extends no further than to give damages for wrongs committed, and cannot be exercised to prevent the commission of the wrong in the first instance, it is lamentably deficient. But this Court has announced a different conclusion. In the case of *In re* Neagle, 135 U. S., 1, Mr. Justice Miller says:

"If a person in the situation of Judge Field could have no other guarantee of his personal safety, while engaged in the conscientious discharge of a disagreeable duty, than the fact that, if he was murdered, his murderer would be subject to the laws of a State, and, by those laws, could be punished, the security would be very inefficient. The plan which Terry and wife had in mind of insulting and assaulting him and drawing him into a defensive physical contest, in the course of which they would slay him, shows the little value of such remedies. We do not believe that the government of the United States is thus inefficient, or that its Constitution and laws have left the high officers of the government so defenseless and unprotected."

Neither has the Constitution and laws left the *property* of non-resident citizens of States so defenseless and unprotected. The Court below in this case failed to make any distinction between persons and property. The Federal Courts will not prevent a threatened assault upon the *person* of a non-resident citizen, and will entertain a suit for damages after the assault has been committed, because the one is within its powers and the other is not. The threatened assault is an offense against society—against the peace and dignity of the State, and is not against the peace and dignity of the United States. After the assault has taken place, the criminal side is still

only a matter for the consideration of the State Courts, and is only punishable there; the question of damages is a controversy between two persons, and, being between citizens of different States, may come before the Federal Courts. In case of threatened assaults on *property*, we have a controversy between individuals to start with, and, if the diversity of citizenship exists, one that is within the jurisdiction of the Federal Courts. The Constitution gives jurisdiction over controversies between individuals, but not those arising between society and the individual. The bill of complaint in this case presented a controversy between individuals and between individuals alone.

The fear of encroachment upon the rights of the State as to the preservation of peace and good order is unfounded. Even admitting that the Court, by taking jurisdiction, would tend to keep the peace—a duty incumbent on the State—would not divest it of a power conferred by the Constitution and laws. Cases frequently arise where the Federal government incidentally keeps the peace. During the strikes of 1894, the injunctions granted by the Federal Courts at the suit of the United States, and in those cases where the property was in the hands of receivers appointed by Federal Judges, did more than anything else to preserve the peace. And the Court that denied the injunction in this case granted the same relief in cases concerning interstate commerce that was given in other Federal tribunals. And yet the power to regulate commerce is no higher or more binding than that of deciding controversies between citizens of different States. If the peace can be kept in the one case, it can in the other.

But this Court has passed directly upon this proposi-

tion. Mr. Justice Bradley so clearly stated the rule that it should silence all discussion. He said:

"Somewhat akin to the argument which has been considered, is the objection that the Deputy Marshals authorized by the Act of Congress to be created, and to attend the elections, are authorized to keep the peace, and that this is a duty which belongs to the State authorities alone. It is argued that the preservation of peace and good order in society is not within the powers confided to the government of the United States, but belongs exclusively to the States. Here again we are met with the theory that the government of the United States does not rest upon the soil and territory of the country. We think that this theory is founded on an entire misconception of the nature and powers of that government. We hold it to be an incontrovertible principle that the government of the United States may, by means of physical force exercised through its official agents, execute on every foot of American soil the powers and functions that belong to it. This necessarily involves the power to command obedience to its laws, and hence the power to keep the peace to that extent."

Ex parte Siebold, 100 U. S., 371.

If the provision that "Congress may at any time make or alter such regulations" made as to holding elections for Senators and Representatives gives the power to keep the peace, so the power to decide controversies between citizens of different States confers the same right. Every power granted the government of the United States is of equal dignity and importance, and carries with it the same grant of incidental powers necessary to its complete enjoyment. The authority to determine controversies between citizens of different States carries with it the power to keep the peace whenever necessary, just as

much as the power to declare war and raise armies carries with it the right to use force and break the peace. And the Court, at the last term, decided a case practically conclusive of the one at bar. Both the right of equitable relief and the bugbear of interfering with the rights of the States were disposed of.

In re Debs, 158 U. S., 564.

But there are still other grounds set forth in the supplemental bill upon which the Court below should have taken jurisdiction. We desire simply to call attention to these with a reference to the section of the Revised Statutes of the United States, or the Constitution upon which we claim they rest.

First—The complainant alleged that it was prevented from performing acts necessary to acquire title to a portion of the public domain, those acts being the development of its claims, application to the Surveyor General for an order of official survey, the actual survey by the proper Deputy United States Mineral Surveyor, application to the Land Office for patent, posting of notice and all things required by the Federal statutes and Land Department to secure patent. This Court has decided that a conspiracy to deprive one of the right to locate public land of the United States is a conspiracy to deprive him of rights, privileges and immunities granted and secured to him by the Constitution and laws of the United States.

United States vs. Waddell, 112 U. S., 76.

Under this authority the right to take up a portion of the public domain as a mineral claim is a privilege and right granted and secured by the Constitution and laws of the United States. Any interference with that right, or a conspiracy to interfere, gives rise to a controversy arising under the laws of the United States.

Second—Complainant alleged that the respondents were preventing it from going upon mineral lands belonging to the United States, and mining and exploring the same. The entire Cripple Creek district is alleged in the complaint to be, and as a matter of fact is, a portion of the public domain of the United States; the paramount title to the same is in the United States, and by the Revised Statutes of the United States all mineral lands are declared to be open and free to exploration, occupancy and possession.

Revised Statutes, Sec. 2319.

The act of the respondents was an interference with this right.

Third—The complainant alleged that the respondents had entered upon the public domain and erected an unlawful inclosure and had obstructed free passage across the public domain of the United States, to the detriment and injury of the complainant as a citizen of the United States, and this in direct violation of an Act of Congress upon this identical subject.

Supplement to the Revised Statutes, pages 477 and 478.

Fourth—The complainant alleged that the respondents had conspired together to go upon the premises of the complainant and deprive it of the equal protection of the laws and of certain immunities and privileges guaranteed to it by the Constitution and laws of the United States.

Revised Statutes, Secs. 989 and 5508.

Fifth—The complainant alleged that the respondents by their acts in conjunction with the officials of the State of Colorado, had deprived it of its property without due process of law, and that it had been denied the equal protection of the laws, contrary to the provisions of the

Fourteenth Amendment to the Constitution of the United States. The bill alleged that the executive authority of the State of Colorado was in collusion with the respondents, and when appealed to had wholly deprived the complainant of the equal protection of the laws, by refusing to give it protection, and by actually threatening to prevent the peace officers of the county in which complainant's property was situated, from executing the writs of Courts and performing their sworn duties. This Court has decided that where a similar state of facts exists, the Federal authorities have a right to interfere.

Ex parte Virginia, 100 U. S., 339.

Yick Wo vs. Hopkins, 118 U. S., 356.

That the acts complained of amounted to a deprivation of the rights secured by the Fourteenth Amendment is undeniable. How are wrongs of this character to be remedied? By the legislative, executive or judicial department of the Federal government. The executive could act in but one way, by ascertaining the facts in some manner satisfactory to itself, commanding the guilty parties to desist, and, in case of refusal, executing its command by the strong hand of armed force. The legislative department could only pass a law prohibiting the acts themselves and commanding the executive to see that its will was executed. But how superior is the judiciary! Its very organization is for the purpose of affording remedies for wrongs. It is always ready and able to act. Its very machinery is devised for the purpose of ascertaining the facts, applying to these facts the law, and, in case the Constitution has been violated, decreeing the proper relief. Indeed, it has shown itself capable of enforcing its decrees even in the face of hostile States and armed men. The notable instance in which the Marshal of Pennsylvania summoned a posse of two thousand men